No. 05-641

IN THE

SUPREME COURT OF THE UNITED STATES

Arthur Allen and Donald Bailey,

Petitioners

-vs-

Bunker Hill Township

Respondent

On Petition for Writ of Certiorari to
the Michigan Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

INTRODUCTORY STATEMENT

Arthur Allen owns a parcel of real property in Bunker Hill Township. Donald Bailey and his wife Glenda, Mr. Allen's daughter, own and occupy a 1984 manufactured home, built and certified to "HUD standards" when sold to the retail public. The Baileys lived in the home on another parcel in Bunker Hill Township from 1996 with all required local permits. Manufactured homes are permitted land uses under the Township Zoning Ordinance. In 1999 the Township adopted regulations requiring re-inspections and re-certifications to "current HUD standards" as a condition of locating or moving a manufactured home within the Township. In 2000 the Baileys moved the home to Mr. Allen's parcel.

QUESTIONS PRESENTED

1. Are the federal safety and construction standards required under the National Manufacturing Construction and Safety Standards of Act of 1974, 42 USC §5401-5426, and the federal regulations, 42 CFR §3280.1, *et seq.*, for manufactured homes, applied retroactively?

2. Is a local unit of government, barred from mandating re-inspection and re-certification to the "current" federal safety and construction standards of the National Manufacturing Construction and Safety Standards of Act of 1974, *supra.*, and the federal regulations, *supra.*, by federal preemption?

LIST OF PARTIES

The names of all parties to the proceeding in the court whose judgment is sought to be reviewed here appear in the caption of the case.

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Application for Leave to Appeal to the Michigan Supreme Court denied. 474 Mich. 854, 702 NW 2d 575 (August 30, 2005).

BASIS FOR JURISDICTION IN THE UNITED STATES SUPREME COURT

The Michigan Supreme Court order, denying the final discretionary review under the State rules, was entered August 30, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. §1257.

STATUTES AND FEDERAL REGULATIONS INVOLVED

The pertinent provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, 42 U.S.C. §5401 *et seq.*, are set forth below:

> 42 U.S.C. §5403
> (d) *Supremacy of Federal standards*
> Whenever a Federal manufactured home construction and safety standard established under this chapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the

Federal manufactured home construction and safety standard."

42 U.S.C. § 5403:

(d) The Secretary is authorized to conduct such inspections and investigations as may be necessary to promulgate or enforce Federal manufactured home construction and safety standards established under this chapter or otherwise to carry out his duties under this chapter.

The most pertinent Federal Regulation is set forth below:

24 CFR § 3282.11 Preemption and reciprocity.

(a) No State manufactured home standard regarding manufactured home construction and safety which covers aspects of the manufactured home governed by the Federal standards shall be established or continue in effect with respect to manufactured homes subject to the Federal standards and these regulations unless it is identical to the Federal standards.

(b) No State may require, as a condition of entry into or sale in the State, a manufactured home certified (by the application of the label required by §3282.362(c)(2)(i)) as in conformance with the Federal standards to be subject to State inspection to determine compliance with any standard covering any aspect of the manufactured home covered by the Federal standards. Nor may any State require that a State label be placed on the manufactured home certifying conformance to the Federal standard or an identical standard. Certain actions that States are permitted to take are set out in §3282.303.

(c) States may participate in the enforcement of the Federal standards enforcement program under these regulations either as SAAs or PIAs or both. These regulations establish the exclusive system for enforcement of the Federal standards. No State may establish or keep in effect through a building code enforcement system or otherwise, procedures or requirements which constitute systems for enforcement of the Federal standards or of identical State standards which are outside the system established in these regulations or which go beyond this system to require remedial actions which are not required by the Act and these regulations. A State may establish or continue in force consumer protections, such as warranty or warranty performance requirements, which respond to individual consumer complaints and so do not constitute systems of enforcement of the Federal standards, regardless of whether the State qualifies as an SAA or PIA.

(d) No State or locality may establish or enforce any rule or regulation or take any action that stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. The test of whether a State rule or action is valid or must give way is whether the State rule can be enforced or the action taken without impairing the Federal superintendence of the manufactured home industry as established by the Act.

[42 FR 2580, Jan. 12, 1977; 56 FR 65186, Dec. 16, 1991; 61 FR 10859, March 15, 1996] (App.67-88)

STATEMENT OF FACTS

The facts in this case were stipulated to by the parties. The Defendant/Petitioner-Bailey, together with his wife, Glenda, Arthur Allen's daughter, own a 1984 manufactured home.[1] Donald and Glenda Bailey occupied the home as their principal residence for their family from 1996 to 2000 on Haynes Road in Bunker Hill Township with all County and Township health and zoning permits. The Baileys moved the home to Mr. Allen's land in 2000. Under the Township zoning ordinance, manufactured homes are permitted uses for both sites.

The Township zoning provision, §11.13, simply states:

> "All single-family dwelling units, including mobile and modular units, to be constructed or located in bunker Hill township shall conforming to all standards listed below. These standards shall apply to all one-family living units built or brought into a Township, those whose location is changed within the Township or on a lot, and those dwellings, mobie (sic) homes, or modular homes which replace an existing mobile home....

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[1] The Michigan courts refer to the Allen/Bailey home both as "mobile" and "manufactured". Although, the term "mobile home" refers to mobile homes built before 1976, the parties stipulated that this home is a "manufactured home" or a "HUD home" constructed and inspected in 1984 before sale to the consumer under Federal authority of National Manufacturing Construction and Safety Standards of Act of 1974, 42 USC §5401-5426. (App.a-13,¶¶6, 7, and 8.)

H. All dwelling units shall meet the minimum construction and safety standards of ...the Department of Housing and Urban Development....."

When the Baileys asked in 2000 for Township permits, they were informed that the Township now had a 1999 "regulation" which stated:

"It is the responsibility of the owner to see that the mobile home meets the current H.U.D. standards before applying for a building permit. (H.U.D. standards in booklet Part 3280 24 CPR CFR Ch.XX) The Township Building Inspector will not issue a building permit prior to an approved H.U.D. inspection. Phone number Dept. of Commerce (334-6203)." (App.a-18-20.)

After being refused a Township permit, Glenda Bailey wrote to HUD in Washington, DC, at the address and phone numbers given by the Township. HUD told her that inspections not required and the Township was preempted[2]. Then, she contacted the Michigan Manufactured Housing Commission (formerly, the Mobile Home Commission), and the Michigan Attorney General, and again was informed that there is no one who performs "current HUD inspections" on existing manufactured homes.[3]

The Petitioners' 1984 Schult Home was manufactured in compliance with the HUD standards in 1984 and remains compliant to those standards. The 1984 manufactured home built can not meet the three HUD amended construction

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[2] See, HUD correspondence, App. a-31-32.

[3] See, State correspondence, App. a-33-34, and summary of testimony andexcerpts from DeGroat deposition. App. a-21-27.

standards effective October 25, 1995 required by the Township regulation. There no other occupancy issue with regard to the home. (App. a-15.)

The Township commenced suit and Petitioners/Defendants answered claiming that the local ordinance was preempted by federal law.

On June 21, 2001, the Ingham County Michigan Circuit Court entered an Opinion on cross-motions for summary disposition, that the Bunker Hill Township Zoning Ordinance provided no mechanism to allow compliance with the requirement that the mobile home comply with "current" Federal (HUD) standards for mobile (or manufactured) homes and denied the Township's request for summary disposition but that there were facts which precluded summary disposition for the Petitioners. (App. a-1) The parties then stipulated to facts and exhibits for further proceedings.

On March 8, 2002, the Circuit Court entered an Opinion granting a Preliminary Injunction, reversed its earlier June 21, 2001 Opinion, and determined that although the Petitioners/Defendants' 1984 home previously complied with HUD Standards in 1996 when it was first placed in Bunker Hill Township, that by moving to a new location in 2000 within the same Township, the home lost its standing as compliant to then-current 1999 HUD standards, and must comply with the amended HUD standards. The Court acknowledged that HUD does not require nor provide for re-inspection or re-certification of older homes, anywhere or anytime, absent a consumer complaint, but that was no defense to compliance with the local ordinance. (App. a-35-46).

On April 25, 2002 the Circuit Court clarified its prior opinion (App. a-47-48) and May 10, 2002 entered a Preliminary Injunction, which became the effective final

judgment on the issue of occupancy of the home, ordering the Bailey family to leave their home. (App. a-50.)[4]

On May 14, 2003[5], the Circuit Court issued its final Opinion holding that the location of home to be a nuisance by reason of the prior Opinions and on June 5, 2003 its Revised Final Order and Permanent Injunction requiring the home to be removed. After denial of an application to stay enforcement, the Petitioners removed the unit from the Township. .

The Michigan Court of Appeals affirmed the lower court by Opinion entered November 9, 2004.

On the issue of federal preemption, the Michigan Court of Appeals reviewed the preemptive provisions of the federal act and regulations:

"The preemptive reach of the federal act is express:

> Whenever a Federal manufactured home construction and safety standard established under this title is in effect, no State or political subdivision of a State shall have any authority either to establish, or continue in effect, with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the

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[4]The Circuit Court denied reconsideration on June 5, 2002. App. a-51.

[5]There was an intervening application for leave to appeal to the Michigan Court of Appeals to stay a post-injunctive proceedings, which is not included in the Appendix as not relevant to the federal question but are noted in the subsequent Michigan appellate opinion and decision. (App. a-53).

> Federal manufactured home construction and safety standard.(citing 42 USC 5403(d).)

"HUD has further defined the scope of preemption in 24 CFR § 3282.11(d):

> No State or locality may establish or enforce any rule or regulation or take any action that stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. The test of whether a State rule or action is valid or must give way is whether the State rule can b enforced or the action taken without impairing the Federal superintendence of the manufactured home industry as established by the Act. (Citing 24CFR § 3282.11(d))

"Furthermore,

> Federal preemption under this subsection shall be broadly and liberally construed to assure that disparate State or local requirements or standards do not affect the uniformity and comprehensiveness of the standards promulgated under this section nor the Federal superintendence of the manufactured housing industry as established by this title.(citing 42 USC § 5403(d))

"If a state or local ordinance is consistent with HUD requirements dealing with construction and safety or regulates on another basis, then that ordinance is not preempted by the federal act. The township's zoning ordinance requires nothing more than compliance with the minimum construction and safety standards of HUD. Therefore, it is not preempted by the federal act." (App. a-55-56)

The Michigan court did not articulate any other basis for the zoning ordinance's regulation of construction and safety other than "compliance" with the federal regulations.

Petitioners' timely Motion for Reconsideration was denied by Order entered December 29, 2004. (App. a-61)

Petitioners timely applied for leave to appeal to the Michigan Supreme Court, the last court of discretionary review, which was denied August 30, 2005. (App. a-62).

PRESERVATION OF FEDERAL QUESTIONS SOUGHT TO BE REVIEWED

Petitioners have preserved the federal questions by repeated pleadings, briefs, and citations of the National Manufacturing Construction and Safety Standards of Act of 1974, 42 USC §5401-5426, (hereafter "the federal act") and the Rules and Regulations, Department of Housing and Urban Development, 24 CFR § 3282.1 *et seq*., (hereafter "the federal regulations"), and specifically, 24 CFR § 3282.11, Preemption and reciprocity, to the Michigan Courts at every level, as is demonstrated by the opinions of those courts.

ARGUMENT AND REASONS FOR GRANTING OF THE PETITION

SUMMARY OF ARGUMENT

The Michigan court is in effect prohibiting movement of non-"current" manufactured homes into Michigan units of government by permitting local regulations, procedures and enforcement systems, in the identical area regulated by federal statute and agency, under the guise of the color of the federal regulation, but incorporating its own interpretation of those federal standards and application of its own remedies, in direct contradiction to the express language of Congress. Under the reasoning of the Michigan court, every local unit of government is free to ban the location of anything other than the very newest manufactured home within its jurisdiction, contrary to the express language of the statute and regulations, the practice and understanding of the federal

and state agencies authorized to enforce the statute and regulations, and the construction of statute by the federal Courts of Appeals thereby, imposing a loss without compensation on every owner of an existing manufactured home who seeks to move an existing home to a new location. Upon adoption of such ordinances, availability of used manufactured homes will become a thing of the past.

The Michigan court does this by asserting that the Bunker Hill ordinance is "consistent with HUD requirements dealing with construction and safety, or regulates on another basis," thereby is not preempted by the federal act. Michigan holds that the township's zoning ordinance requires "nothing more than compliance with the minimum construction and safety standards of HUD, and therefore, it is not preempted by the Federal act." The Michigan court suggests that this narrow ground is a separate basis upon which to sustain a local construction and safety regulation. (App. a-52-54.)

This flies in the face of Congress' delegation to the Secretary of the Department of Housing and Urban Development and to the Secretary's regulations:

> "The Secretary is authorized to conduct such inspections and investigations as may be necessary to promulgate or enforce Federal manufactured home construction and safety standards established under this chapter or otherwise to carry out his duties under this chapter." 42 USC §5413 (d)

If a State believes that there is an imminent safety hazard or a serious defect, the State is required to refer the matter to HUD for enforcement. 24 CFR §3282.405(b), 24 CFR §3282.407(a)). A State only acting as an approved State Administrative Agency (SAA) under section 623 of the act, can enforce the federal standards. 62 FR 3456, p 4.(App. a-

77).[6] None of these enforcement actions are given over to local units.

The reported decisions do not disclose another instance of a local unit requiring retroactive re-certification and re-inspection to any "current" or other time specific federal construction and safety standards of a person's home.

THE MICHIGAN COURT HAS DECIDED THAT LOCAL UNITS CAN ENFORCE FEDERAL REGULATION OF MANUFACTURED HOMES AND ARE NOT PREEMPTED BY THE FEDERAL ACT, IN CONFLICT WITH DECISIONS OF THE UNITED STATES COURTS OF APPEALS

The decision of *Scurlock v. City of Lynn Haven*, 858 F.2d 1521 (11th Cir. 1988) correctly holds that a local ordinance can not impair the federal superintendency of manufactured housing. The instant Michigan decision is not a case where the rationale for a local zoning ordinance can be distinguished from construction and safety standards, such as the decisions in *Burton v City of Alexander*, 2001 WL 527415 (M.D.Ala.) and *Lauderbaugh v. Hopewell Township*, 319 F3d 568 (3rd Cir.(Pa.) 2003). Neither is this a case where the ordinance intends to protect property values or aesthetics, rather than regulate safety and construction, such as, *Georgia Manufactured Housing Ass 'n v Spalding Co.* 148 F3d 1304, 1310 (CA 11, 1998), or *Texas Manufactured Housing Ass 'n v City of Nederland*, 101 F3d 1095, 1100 (CA 5, 1996), *cert. denied*, 521 U.S. 1112, 117 S Ct 2497, 138 LEd2d 1003 (1997). Moreover, the federal Courts of appeals

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[6]Deposition testimony of the Michigan manufactured housing administrative specialist demonstrated without question that there is no federally licensed agent to do any post-construction inspection on a manufactured home, absent a consumer complaint. (App. a-26-27)

have uniformly affirmed the preemption of the federal act on construction and safety and the superintendence of the federal regulations over all local construction and safety standards. *Georgia Manufactured Housing Ass 'n v Spalding Co.*, supra., and *Texas Manufactured Housing Ass 'n v City of Nederland*, supra.

The Michigan court takes these holdings of the United States Courts of Appeals to justify a retroactive application of the federal act and regulations as a separate basis, analogous to the separate basis of aesthetics or zoning, to justify local ordinance enforcement of construction and safety issues. As stipulated in this Township, the zoning ordinance allows manufactured homes, so there is no other basis to sustain this rationale, save that the federal act is retroactive.

The Michigan Court also misreads *CMHMfg. Inc v Catawba Co*, 994 F Supp 697 (WD NC, 1998) another decision on the regulation of the aesthetics in housing, and ignores:

> It is thus manifest that the HUD regulations are directed at safety, and are not concerned with regulation of the appearance or aesthetic characteristics of manufactured housing. Thus, in cases where municipalities have attempted to impose different *safety standards* on manufactured housing from those embodied in the HUD code, their ordinances have been found preempted by federal law. However, the parties have directed the Court to no case finding preemption of a regulation not impacting safety standards in some direct way." Supra. 706

The Michigan court also misreads both *Michigan Manufactured Housing Ass 'n v Robinson Twp*, 73 F Supp 2d 823 (WD Mich, 1999), and this Court's holding in *Michigan Canners & Freezers Ass 'n v Agricultural Mktg &*

Bargaining Bd, 467 US 461, 469; 104 Sct 2518; 81 LEd2d 399(1984). Both decisions find Michigan legislation to be preempted.

In *Michigan Canners & Freezers Ass 'n*, supra., 469, this Court held that a Michigan statute authorizing producers' associations to engage in conduct that the federal act forbade was struck down "as an obstacle to the--accomplishment and execution of the full purposes and objectives of Congress". Only in passing on the distinctions between the lines of precedents on preemption, did this Court observe that certain aspects of the Michigan cooperative marketing act were not preempted on the basis of the impossibility for an individual to comply with both state and federal law. Clearly, this Court did not hold that the state regulation was permitted where there was impossibility of compliance. *Supra.*, 478. In the instant case, both HUD and the State agency actions, clearly demonstrate the impossibility of compliance.

The Michigan court also cites *Michigan Manufactured Housing Ass 'n v Robinson Twp.*, 73 F Supp 2d 823 (WD Mich, 1999) as support for local enforcement of federal regulations, although the holding squarely, preempted a local attempt to impose a local construction and safety standard which differed from the federal construction and safety standards for manufactured housing.

As to each of these authorities, the Michigan court is not only wrong, it sets the holdings on their head, thereby dismantling federal superintendence of the field of manufactured housing. .

In 42 USC 5403 (d) Congress prohibits a political subdivision of a state from having any authority to either establish or continue into effect "any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal Manufactured Home Construction

and Safety Standard." The Secretary of HUD has never promulgated any regulation requiring any post-construction or post-sale inspection, except in the instant of a consumer complaint. On the basis of the above authorities, the Michigan court is squarely in conflict with the federal Courts of Appeals and this Court.

THE MICHIGAN COURT HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW, RETROACTIVITY OF FEDERAL CONSTRUCTION AND SAFETY STANDARDS, THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT, AND HAS DECIDED THE QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT AND THE FEDERAL COURTS OF APPEALS

Several federal regulations substantively change the construction and safety standards with different effective dates of each change.[7] Under the reasoning of the Michigan

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[7]See partial listing. Among the changes is the newly established maximum formaldehyde emission standards effective February 11, 1985, just months after the production of the Bailey/Allen manufactured home. Then there are wind standards for certain parts of the country adopted effective July 13, 1994.A massive amount of regulations are incorporation by reference from various building codes, effective Nov. 1, 1982, Dec. 15, 1987, Oct. 25, 1993, and Mar. 31, 1994. Smoke alarm standards were first adopted Mar. 19, 2002, and amended July 31, 2002. Structural design standards are changed frequently, Feb. 12, 1987, Oct. 25, 1993, Jan. 14, 1994, Mar. 31, 1994, Oct. 20, 1997. (App. a-63-68.)

court all manufactured homes built after the date of effective change is non-compliant with federal construction and safety standards and thereby subject to exclusion by local units of government. According to the logic in Michigan, Bunker Hill Township could out law all manufactured homes built before 2002 for the lack of smoke alarms, even though the Secretary of HUD has not seen fit to give any regulation express retroactive effect.

The federal regulations do not distinguish between manufactured homes built prior to 1993 and after, or prior to1999 or after; nor do they suggest any second inspection for compliance to later federal construction and safety standards, except where the consumer complains. 24 CFR subpart I, §3282.401, *et seq.*

If a federal act is not expressly retroactive, its regulations can not be made retroactive, because "[a]n impermissibly retroactive law is one that "takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past." *Landgraf v. USI Film Prods.*, 511 U.S. 244, 269, 114 S.Ct. 1483, 128 L.Ed.2d 229 (1994). The Michigan court is violating the deeply held maxim against retroactivity of civil legislation. *Kaiser Aluminum & Chemical Corp. v Bonjorno*, 494 U.S. 827, 842-844, 855-856, 110 S.Ct. 1570, 1579-1581, 1586-1587, 108 L.Ed.2d 842 (1990) (Justice Scalia, concurring ("The principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal human appeal.").

The Ninth Circuit Court of Appeals has ruled that amendments to the Fair Housing Act and regulations promulgated pursuant to the amendments, prohibiting discrimination in rentals, do apply retroactively to a

manufactured home community and its rules of occupancy. *Covey v. Hollydale Mobilehome Estates*, 116 F.3d 830, 835 - 836 (9th Cir,1997). Quoting from this Court's lead in *Landgraf*, supra., the Ninth Circuit found that absent an express Congressional intent to give legislation retroactivity of the amendments to the Fair Housing Act, courts can not infer a retroactive effect where contract and property rights have attached.

Both precedents demonstrate that Michigan has improperly inferred retroactivity in a case involving the Petitioners' settled contract and property rights, because the law requires predictability and stability and the courts presumptively should not apply "statutes affecting substantive rights, liabilities, or duties to conduct arising before their enactment." *Landgraf*. at 278. Since Congress has not expressly stated an intent to make the federal construction and safety standards retroactive, any new federal regulation should not impair rights possessed by the Petitioners when they moved their manufactured home within the Township, increase their liability, or imposed new duties, e.g., a re-inspection to "current standards" with respect to an already completed manufactured home. See, *Landgraf*, *Id.* at 280.

Moreover, Bunker Hill Township has invented a distinction that is explicitly forbidden by the published HUD policy guidelines on preemption. 62 FR 3456, page 3, Zoning. (App. a-73-79), that is, it is a system of enforcement that is not "identical to the enforcement provisions in the Federal regulations." 62 FR 3456, page 4, State Enforcement and the regulations.

The Bunker Hill Township zoning ordinance and its application by its local regulation conflicts with the express terms of 24 CFR §3282.11, Preemption and reciprocity. Bunker Hill Township (1) has established or continued in

effect a manufactured home standard regarding manufactured home construction and safety which covers aspects of the manufactured home governed by the Federal standards with respect to manufactured homes subject to the Federal standards and which is not identical to the Federal standard; (2) requires as a condition of entry into Bunker Hill Township, a certification as in conformance with the Federal standards subject to a State and local inspection to determine compliance with a standard covering aspects of the manufactured home covered by the Federal standards, and (3) establishes and keeps in effect through its zoning ordinance a code enforcement system, procedures and requirements which purport to be systems for enforcement of the Federal standards which are outside the system established in the Federal regulations and which go beyond the Federal system to require remedial actions to the manufactured home which are not required by the Federal Act and regulations.

The Michigan court's attempt to judicially create an exception to preemption can not be allowed to stand against Congressional power to preempt state law. The Court has long recognized that preemption is established by either the express terms of the legislation, by inference when the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress left no room for supplementary state regulation, or by preemption of a whole field where the federal interest is so dominant that the federal system will be assured to preclude enforcement of state laws on the same subject. *Hillsborough County, Fla. v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, 714; 105 S Ct 2371; 85 LEd2d 714(1985). Conflict preemption, occurs "when compliance with both state and federal law is impossible, or when the state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objective of Congress." State laws can be pre-empted by

federal regulations as well as by federal statutes. *Capital Cities Cable, Inc. v. Crisp, supra,* at 699, 104 S Ct, at 2700; *Fidelity Federal Savings & Loan Assn. v. De la Cuesta,* 458 U.S. 141, 153-154, 102 S.Ct. 3014, 3022-3023, 73 L.Ed.2d 664 (1982); *United States v. Shimer,* 367 U.S. 374, 381-383, 81 S.Ct. 1554, 1559-1561, 6 L.Ed.2d 908 (1961). Also, for the purposes of the Supremacy Clause, the constitutionality of local ordinances is analyzed in the same way as that of statewide laws. *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 93 S.Ct. 1854, 36 L.Ed.2d 547 (1973).

The local requirement of a re-inspection is a conflict in regulation and is preempted..[8] Conflict preemption occurs "when compliance with both state and federal law is impossible, or when the state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objective of Congress.'" *U.S. v. Locke,* 529 U.S. 89, 111, 120 S.Ct. 1135 (2000)

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[8] The Michigan court dismisses the impossibility of compliance with both state and federal law in a footnote:

> ".....neither state nor federal law authorizes post-construction inspections of mobile homes. However, defendants only support this assertion by effectively reiterating the preemption claim we have already rejected. Although neither HUD nor the Commission typically performs post-construction inspections on mobile homes, defendants could have had their home inspected by any competent professional to determine how the home could be altered to meet current HUD standards." (App. a-57).

Not only does the Michigan court ignore that there is no competent professional under the federal regulations to do such an inspection, the Petitioners should not be subjected to the burden of retroactive law in the first place.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted.

Respectfully submitted

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Dated: November 8, 2005

PETITIONERS' APPENDIX
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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

BUNKER HILL TOWNSHIP,
Plaintiff, File No. 00-92513-CZ

v

ARTHUR ALLEN and DONALD BAILEY,
Defendants. OPINION AND ORDER

At a session of said Court held in the City of Lansing, Ingham County, Michigan on the 28th day of June, 2001,

the Hon. Thomas L. Brown, presiding.

This matter is before the Court the parties' respective motions for summary disposition. Defendants' motion is brought pursuant to MCR 2.1 16(C)(8), whereas Plaintiff's motion is brought pursuant to MCR 2.1 16(C)(9) & (10). Oral argument has been waived, and the parties have agreed that the Court's decision is to be based solely on a review of the briefs. The case file indicates that the parties timely filed theft respective briefs and responses. Having fully reviewed this matter, the Court makes the following determinations.

Defendant Donald Bailey is the owner of a mobile home located on a parcel of land in Plaintiff Bunker Hill Township. Mr. Bailey occupied the home as a private residence from 1996 to 2000. The mobile home was built in the mid-1980's and complied with Bunker Hill Township's regulations, as well as with federal standards, at the time of its manufacture.

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in September 2000, the mobile home was moved to another

location within the Township. Specifically, to a parcel of land owned by Defendant Arthur Allen, Mr. Bailey's father-in-law. A mobile home had previously existed on the parcel but has since been removed. Mr. Bailey attempted to procure permits from the Township in order to relocate his mobile home to Mr Allen's property. The permit requests, however, were denied because the mobile home did not meet current United States Department of Housing and Urban Affairs (HUD) requirements.

One such requirement, as referenced in Plaintiff's Zoning Ordinance, provides that a single-dwelling, mobile home unit whose location is changed within the Township must meet certain HUD minimum construction safety standards. Mr. Bailey intended to comply with that requirement and attempted to obtain an updated inspection certificate. However, he was informed by an official from the Michigan Manufactured Housing Commission that no one performs "current HUD inspections" on existing, owner-occupied homes. Mr. Bailey was further informed that HUD standards supercede all state and local building codes and procedures. Rather than face civil fines, Mr. Bailey vacated the home but intends to reoccupy it at a later date. The mobile home remains located on Mr. Allen's property.

Plaintiff filed the underlying three-count Amended Complaint seeking injunctive relief and alleging that Defendants violated Township regulations (Count I), violated the Township's Zoning Ordinance resulting in a nuisance per se (Count II), and created a nuisance in fact (Count III). Reviewing first Defendants' motion for summary disposition, it is their contention that Counts I and II fail to state claims upon which relief can be granted pursuant to MCR 2.116(C)(8).

A motion under this subrule tests the legal sufficiency of the claim by the pleadings alone. All factual allegations supporting the claim are accepted as true, as well as any

reasonable inferences or conclusions which may be drawn from the facts. The motion should be granted only

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when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. *Jackson v Oliver,* 204 Mich App 122, 125; 514 NW2d 195 (1994).

The rule is well established that "the mere statement of a pleader's conclusions, unsupported by allegations of fact, will not suffice to state a cause of action." *ETT Ambulance Service Corp v Rockford Ambulance, mc,* 204 Mich App 392, 395; 516 NW2d 498 (1994).

According to Plaintiff's First Amended Complaint, Count I avers that Bunker Hill Township has enacted and adopted the BOCA Basic Building Code, pursuant to MCL 125.1501, *et seq;* MSA 5.2949(1), *et seq,* and has established certain building requirements for mobile homes to be located within the Township. Further, that Defendants violated Township regulations by failing to obtain the requisite Building or Occupancy Permits. Count I further avers that Defendants failed to meet current HUD standards, thereby violating both federal and local laws.

Count II avers that Defendants violated Section 11.13 of the Bunker Hill Township Zoning Ordinance by failing to meet the minimum construction and safety standards, as provided by 42 CFR 3280, *et seq.* Further, that Defendants' actions constitute a nuisance per se pursuant to MCL 125.294; MSA 5.2963(24). Section 24 provides, in part: "A use of land, or a dwelling, building, or structure including a tent or trailer coach, used, erected, altered, razed, or converted in violation of a local ordinance or regulation adopted pursuant to this act is a nuisance per se."

Accepting all the factual allegations alleged in the Amended Complaint as true, the Court is of the opinion that a factual development can be created to possibly justify recover.

Accordingly, Defendants' motion for summary disposition under subrule (C)(8) is denied.

Turning next to Plaintiff's motion for summary disposition, a motion under subrule(C)(9) tests the legal sufficiency of a pleaded defense. The motion is tested on the pleadings alone, with all well-pleaded allegations being accepted as true. The proper test is whether the defendant's

[Page 3]

defenses are "so clearly untenable as a matter of law that no factual development could possibly deny plaintiff's right to recovery." *Lepp v Cheboygan Area Schools,* 190 Mich App 726, 730; 476 NW2d 506 (1991).

According to Defendants' defenses, Plaintiff's requirement that a mobile home must have a "current HUD inspection" is void and unlawful because: (1) there is no authorized agent who can perform such an inspection after a mobile home has been manufactured; (2) the mobile home at issue met the HUD requirements in effect at the time it was manufactured; and (3) Plaintiff's regulation constitutes a taking.

Defendant also pleads that Plaintiff's requirement is unconstitutional and is preempted by federal law. Moreover, that Defendants, in any event, attempted to comply with Plaintiff's regulations and were unable to procure an inspection because neither HUD nor any state or local agency conducts the inspections required by the Township.

The Court is of the opinion that Defendants' defenses present sufficient legal bases and demonstrate that a factual development could possibly deny Plaintiff's right to recover on the Amended Complaint. Accordingly, Plaintiff's motion for summary disposition under subrule (C)(9) is denied.

As for Plaintiff's motion under subrule (C)(10), the test is whether the complaint is factually sufficient. *Maiden v Rozwood,* 461 Mich 109, 119; 597 NW2d 874 (1999). The Court examines the facts in the light most favorable to the

nonmoving party. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993).

The moving party must support the motion with affidavits or other documentary evidence. MCR 2.1 16(G)(3)(b). *Patterson v Kleiman*, 447 Mich 429, 434, n.6; 526 NW2d 879 (1994). The opposing party may not rest upon mere allegationsor denials in the pleadings but must by affidavit

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or other documentary evidence, set forth specific facts showing there is a genuine issue for trial. MCR. 2.1 16(G)(4). *Manning v Hazel Park*, 202 Mich App *685*, 689; *509* NW2d 874 (1993).

The reviewing court is to evaluate such a motion by considering the substantively admissible evidence actually proffered in opposition to the motion. *Maiden, supra*, at 121. The reviewing court may not employ a standard citing the mere possibility that the claim might be supported by evidence produced at trial. *Id.*

Plaintiff argues that its Zoning Ordinance is valid and enforceable, and that the Ordinance is neither preempted nor in violation of federal law. In support of these propositions, Plaintiff cites to 42 USC 5403(d), which states the following:

> Whenever a Federal Manufactured Home Construction and Safety Standard established under this chapter is in effect, no state or political subdivision of a state shall have any authority either to establish, or to continue in effect, with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal Manufactured Home Construction and Safety Standard. [42 USC 5403(d)].

Plaintiff also cites to 24 CFR 3282.11, which states as follows:

(a) No State manufactured home standard regarding manufactured home construction and safety which covers aspects of the manufactured home governed by the federal standards shall be established or continue in effect with respect to manufactured homes subject to the Federal standards and these regulations unless it is identical to the federal standards.

.....

(d) No State or locality may establish or enforce any rule or regulation or take any action that stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress. The test of whether a State rule or action is valid or must give way is whether the State rule can be enforced or the

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action taken without impairing the Federal superintendence of the manufactured home industry as established by the Act. [24 CFR 3282.11(a) & (d)].

Plaintiff argues that the Zoning Ordinance complies with the federal requirements regarding minimum construction and safety requirements, as well as with the State's provisions regarding mechanical, electrical and plumbing codes. Plaintiff further argues that the Zoning Ordinance protects the health, safety and welfare of the Township's citizenry.

The Court notes that the parties do not dispute that Defendant Bailey's mobile home received federal certification at the time it was manufactured over 15 years ago. There is also no dispute that the Manufactured Housing Code was amended in 1994, and that the mobile home has not been certified as meeting the post-amendment standards. What the parties do dispute, however, is the requirement under the Zoning Ordinance that all mobile homes moved from one location to another within the Township must comply with "current HUD standards".

According to a letter dated July 7, 2000, Plaintiff's attorney informed Defendant Bailey that the mobile home could not be relocated unless it received a current HUD certification. Based on the facts of this case, it is clear to the Court that what Plaintiff requires is a re-certification of Defendant's mobile home. The July7th letter further provides that the "Township is not in the business of inspecting mobile homes."

Defendants argue that they attempted to comply with the Zoning Ordinance by contacting HUD in order to obtain the necessary re-certification. Defendants proffer a letter dated July 28, 2000, from HUD's Manufactured Housing and Standards Division Director Elizabeth A. Cooke wherein she informed Defendant Bailey:

> While . . . (HUD) does not actually inspect and certify homes, each manufactured home is inspected once during its production
>
> [Page 6]
>
> by a third-party inspection agency, and throughout its production by the manufacturer's quality assurance personnel, in order to assure compliance with the Standards. Further, manufacturers must confirm compliance with the Standards by attaching a certification label to each unit produced.
>
> In your State, a State Administrative Agency (SAA), operating under an agreement with HUD, administers and enforces the Federal Manufactured Housing Program within the State.... We are also not aware of any Federal law or regulation which provides for the inspection of used manufactured homes for placement in a new location or after the sale of the unit. In these cases, manufactured homes generally fall under the jurisdiction of State and local authorities.

Defendants also proffer a letter dated November 21, 2000, from Michigan Department of Consumer and Industry Services Regulatory Specialist Kevin G. DeGroat, wherein he states:

> ....neither HUD nor its agents conduct local building inspections. Moreover, HUD has no program for dispatching personnel to every location to conduct routine reconfirmation inspections for already-certified manufactured homes, unless the inspection is done pursuant to a federal investigation. The HUD certification label required to be affixed to all manufactured homes constructed in the U.S. on or after June 15, 1976, is attached to each home at the point of manufacture . . . and serves as official federal verification that the home was built to the federal manufactured home construction and safety standards. These standards supercede all state and local building codes and procedures.

Moreover, according to Mr. DeGroat's deposition transcript, he testified that he knows of no federal standard that requires a current HUD inspection after the manufacture of a mobile home. Nor does he how of any person who can do a post-construction inspection for certification purposes. Furthermore, Mr. DeGroat testified that he knows of no local, state, or federal agency that can do a retroactive inspection for compliance with HUD standards.

Considering all the evidence offered in opposition to Plaintiff's motion, the Court is satisfied that a genuine issue of material fact exists for this matter to survive summary disposition. Although

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the Court recognizes Plaintiff's duty to maintain the health, safety, and welfare of the Township's citizens, there appears to be no mechanism in place whereby Defendants can comply

with the Zoning Ordinance. On the one hand, Defendants are required by the Township to obtain recertification. On the other hand, no local, state, or federal agency conducts re-certification investigations after manufacture.

IT IS ORDERED, therefore, that Defendants' motion for summary disposition pursuant to MCR 2.116(C)(8) is DENIED.

IT IS FURTHER ORDERED that Plaintiff's motion for MCR2.116(C)(9) &(l0) is DENIED.

s/_____
Hon. Thomas L. Brown, Circuit Judge

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

BUNKER HILL TOWNSHIP,
A Michigan Township, File No: 00-92513-CZ
Plaintiff,

v Honorable: Michael G. Harrison
Reassigned to:
Honorable Thomas L. Brown

ARTHUR ALLEN and DONALD BAILEY,
Defendants.

STIPULATED FACTS AND RECORD

NOW COME Plaintiff; BUNKER HILL TOWNSHIP, by and through its attorney Larry A. Strom of LARRY A. SALSTROM, P.C. and Defendants, ARTHUR ALLEN and DONALD BAILEY, by and through their attorney PETER FLINTOFT, and for their Stipulated Facts and Record, state unto this Court as follows:

1. Pursuant to 43 USC 5403 (a), the Department of Housing and Urban Development is required to establish Federal Manufactured Home Construction and Safety Standards and has, in fact, done so.

2. The Federal Manufactured Home Construction and Safety Standards are set forth at 24 CFR 3280.1 et. seq. and said Standards were last amended in 1994.

3. With regard to any regulations it elects to adopted, Bunker Hill Township is required, by Federal statute and regulation, to adopt, and continue in effect, only standards for mobile homes that are identical to the Federal standards set forth at 42 U.S.C.A. § 5403 (d) and 24 CFR 3282.11, which provide as follows:

"Whenever a Federal Manufactured Home Construction and

Safety Standard established under this chapter is in effect, no state or political subdivision of a state shall have any authority either to establish, or to continue in effect, with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal Manufactured Home Construction and Safety Standard."
42 U.S.C.A. § 5403 (d)

(a) No State manufactured home standard regarding manufactured home construction and safety which covers aspects of the manufactured home governed by the federal standards shall be established or continue in effect with respect to manufactured homes subject to the Federal standards and these regulations unless it is identical to the federal standards.

(d) No State or locality may establish or enforce any rule or regulation or take any action that stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress. The test of whether a State rule or action is valid or must give way is whether the State rule can be enforced or the action taken without impairing the Federal superintendence of the manufactured home industry as established by the Act." 24 CFR 3282.11(a)&(d)

4. The Mobile Home Commission Act, Article 7, SubSection (6);

MCL 125.1307 (6); MSA 19.855 (107) (6) as follows:
"(6) A local government ordinance shall not contain roof configuration standards or special use zoning requirements that apply only to, or excludes, mobile homes. A local government ordinance shall not contain a manufacturing or construction standard that is incompatible with, or is more stringent than, a

standard promulgated by the federal department of housing and urban development pursuant to the national manufactured housing construction and safety standards act of 1974, 42 U.S.C. 5401 to 5426. A local government ordinance may include reasonable standards relating to mobile homes located outside of mobile home parks or seasonable mobile home parks which ensure that mobile homes compare aesthetically to site-built housing located in the same residential zone."

5. Bunker Hill Township, through its Zoning Ordinance, adopted in 1981, requires all mobile homes, whose location is changed within the Township or which are brought into the Township to replace an existing mobile home, to comply with current United States Department of Housing and Urban Development [HUD] standards as set forth in the following language from Section 11.13 of said Ordinance, which states as follows:

"All single-family dwelling units, including mobile and modular homes, to be constructed or located in Bunker Hill township shall conform to all standards listed below. These standards shall apply to all one-family living units built or brought into a Township, those whose location is changed within the Township or on a lot. and those dwellings, mobie (sic) homes, or modular homes which replace an existing mobile home...

H. All dwelling units shall meet the minimum construction and safety standards of the Department of Housing and Urban Development.

6. Defendants owned a 1984 Schult mobile home which was lawfully permitted and occupied on a parcel of land within Bunker Hill Township but which was relocated within Bunker

Hill Township to a different parcel of land owned by Defendant Allen.

7. Bunker Hill Township contends that upon relocation the 1984 Schult mobile home is subject to compliance with the Bunker Hill Township Zoning Ordinance requiring compliance with current minimum HOD construction standards, as mandated by HUD.

8. Defendant Allen's parcel is, and was, zoned "Single Family Residential", which includes mobile homes as residences.

9. Defendant Allen's parcel had been vacant since the spring of 1999, but had, prior thereto, been occupied by a single-family residential mobile home, built to then-current HUB standards.

10. The 1984 Schult mobile home was moved to the parcel owned by Defendant Allen in September, 2000, contrary to the Bunker Hill Township Zoning
Ordinance; as a.

11. The 1984 Schult mobile home, when built in 1984, met all the 1984 HUD minimum construction and safety standards and was so certified. No allegation of noncompliance to the 1984 HUT) standards is presented in this case.

12. The 1984 Schult mobile home does not meet the current (October 25, 1994) minimum HUD construction and safety standards when moved to Defendant Allen's parcel in September, 2000. Specifically, it does not meet:

A. The current minimum construction and safety light and ventilation standards set forth at 42 CFR 3280.103 as

established by the Department of Housing and Urban Development;

B. The current minimum construction and safety attic and roof ventilation standards set forth at 42 CFR 3280.504 (c) as established by the Department of Housing and Urban Development;

C. The current minimum construction and safety heat and loss gain coefficient of heat transmission standards [the insulation requirement] set forth at 42 CFR 3280.506 as established by the Department of Housing and Urban Development.

13. Although employees within the Michigan Consumer and Industry Services division of the Manufactured Housing and Land Development division can, and do, inspect mobile homes which allegedly are in violation of such HUD minimum construction and safety standards -- for purposes of assuring compliance with Federal or State law--no such inspections are made available to the public, in general, to verify compliance with current minimum HUD construction/safety standards for cities or townships, for mobile home compliance with current minimum HUD construction and safety standards outside of mobile home parks.

14. Bunker Hill Township does not preclude the movement or sale of this 1984 Schult mobile home either to a mobile home park, or to a location outside of Bunker Hill Township.

15. Defendant Allens' property located within Bunker Hill Township may continue to be used -- as it has in the past -- as a single-family residence, for either a mobile home, or for a site built home. It has been assessed as "single-family residential" with a mobile home since.

16. The parties agreed that the legal issue of"nuisance-in-fact" is to be decided on the Stipulated Record and Stipulated Exhibits.

17. The Stipulated Record for a trial decision of this cause is this Stipulated Facts and Record, the Stipulated Exhibits and the Deposition of Kevin DeGroat.

18. There are no other zoning/building/occupancy/ordinance issues, or other issues, to be submitted to the Court for consideration. If later issues arise between the parties, they will be submitted at a later date.

s/_____	s/_____
Larry A. Salstrom P-24178	Peter Flintoft P-13531
Counsel for Plaintiff	Counsel for Defendants
Dated: October 29, 2001	Dated: October 29, 2001

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

BUNKER HILL TOWNSHIP,
A Michigan Township,
Plaintiff, File No: OO-92513-CZ
-v- Honorable Michael G. Harrison
Reassigned to:
ARTHUR ALLEN Honorable Thomas L. Brown
and DONALD BAILEY,
Defendants.

STIPULATED LIST OF EXHIBITS

NOW COME Plaintiff BUNKER HILL TOWNSHJP, by and through its attorney Larry A. Salstrom of LARRY A. SALSTROM, P.C. and Defendants, ARTHUR ALLEN and DONALD BAILEY, by and through their attorney PETER FLINTOFT, and for their Stipulated List of Exhibits sets forth to this Court as follows:

1. Three pictures of the mobile home as installed which is the subject of this lawsuit.

2. The Bunker Hill Township Zoning Ordinance.

3. Bunker Hill Township Resolution adopted January 19, 1999.

4. Bunker Hill Township Board Minutes dated January 19, 1999.

5. Mobile Home Commission Act and Manufactured Housing Commission General Rules.

6. Deposition of Kevin DeGroat of May 22, 2001..

7. Six (6) letters:

a. Ed Roark letter to Mr. & Mrs. Bailey dated June 6, 2000

b. Don/Glenda Bailey letter to Mr. Roark dated June 20, 2000

c. Larry Salstrom letter dated July 7, 2000

d. U.S. Housing Commissioner letter to Don/Glenda Bailey dated July 28, 2000

e. Don/Glenda Bailey letter to Michigan Manufactured Housing Section, Department of Consumer & Industry Services and Kevin DeGroat letter of July 10, 2000 and repeated on November 20, 2000

f. Michigan Manufactured Housing Section, Department of Consumer & Industry Services, Kevin DeGroat letter to Glenda Bailey dated November 21, 2000.

S/_____	S/_____
Larry K. Salstrom P-24178	Peter Flintoft P-13531
Counsel for Plaintiff	Counsel for Defendants
Dated: October 29 , 2001	Dated: October 29, 2001

STIPULATED EXHIBIT # 3.
Bunker Hill Township Resolution adopted January 19, 1999.

BUILDING REQUREMENTS FOR MOBILE HOMES BUNKER HILL TOWNSHIP

Only one home per parcel of land is allowed.

1) It is the responsibility of the owner to see that the mobile home meets the current H.U.D. standards before applying for a building permit. (H.U.D. standards in booklet Part 3280 24 CPR Ch.XX) The Township Building Inspector will not issue a building permit prior to an approved H.U.D. inspection. Phone number for Dept. of Commerce (334-6203).
2) Plot Plan showing all lot lines and set back measurements.
3) Copy of last survey of the parcel.
4) Health Dept. approval in writing. (887-4312)
5) Driveway permit from Road Commission. (676-9722)
6) Drain Commission permit or a "No Permit Required" letter from that department. (676-8395)
7) The Tax I.D. number. (Parcel No.)
8) A copy of the mobile home's title or other official documents showing the manufacturer, model, serial number, date of manufacture, dimensions and ownership of the proposed mobile home.
9) Building permit fee.

When 1-9 are collected call the Township inspector and set up an appointment to obtain a building permit. (589-9601)

* *

After building permit is issued the following is required by code for installation of mobile home.

(FAILURE IN FOLLOWING THESE CODES COULD RESULT IN LOSS OF PERMIT AND POSSIBLE PENALTY FINES).

1) All Mobile Homes are to be set on piers not more than 8 feet apart, and 24 inches around, and 42 inches deep, from final grade.
2) All Mobile Homes will have a continuous concrete grade floor the size of the mobile home OR an apron; it shall not be less than 8 inches above, nor less than 24 inches below grade. The apron shall be constructed of approved non-decayable, water-resistant and rat proof material.
3) Tie downs are required, 3 on each side. Total of no less than 6.
4) Mobile Homes shall be skirted with non-decaying, water-resistant material.
5) Mobile home must have a minimum of 720-sq. ft. of floor space.
6) Such mobile home shall meet all health and safety standards in effect as of current H.U.D. regulations.
7) All mobile homes need to be inspected and CAN NOT be brought into the Township until they meet current H.U,D. standards.
8) Structural soundness inside and outside the mobile home must meet current standards and must be inspected to meet guidelines for human occupancy.
9) Any mobile home moved from one location to another (within the Township) must comply with the above regulations.
10) Any mobile home removed or replaced (from its current location) must be removed from the premises within 30 days.
Note: Building permit fee does not include a H.U.D. inspection fee.
Page 1 of 2

BUILDING REQUIREMENTS FOR MOBILE HOMES

BUNKER HILL TOWNSHIP
(Continued)

INSPECTIONS - Five building inspections are required.
1) After piers are dug, but before concrete is poured.
2) After rat wall is built but before covered up.
3) Electrical inspection.
4) Plumbing inspection.
5) Before moving into mobile home (Do not move in without final inspection. Fines are $500)

S/_____
Ed Roark 1-1999
Twp Supervisor

S/_____
Lillian Rice
Township Clerk

Page 2 of 2

STIPULATED EXHIBIT #6.
Deposition of Kevin DeGroat of May 22, 2001.

Excerpts from deposition
and Summary of Testimony and Record

The Bunker Hill Township regulations suggest that an owner telephone the Manufactured Housing Division Office. Mr. DeGroat is the very person delegated to answer phone calls regarding questions of Township ordinances, the Department's Regulatory Specialist, Manufactured Housing Division, Michigan State Department of Consumer in Industry Services. (Dep. p. 15, lines 11-19)

Mr. DeGroat has been working exclusively with the Federal Manufactured Home Construction and Safety Act, 42 USC 5401 *et seq.* since 1981. He knows of no official, agency or manner in which the owner of a mobile home could comply with Bunker Hill Township Ordinance through any Federal or State office.

Q. Does the Commission, to your knowledge, have any authority with respect to inspection of an individual manufactured housing unit on private property?

A. It does not.

Q. Is there anyone within your department or division that you know of that is authorized by State statute to do any inspection of an individual manufactured housing unit on private property?

A. I know of no agency. (Dep. 7-8)

A. Okay. Well, under HUD, first of all, the Manufactured Housing and Construction Standards Division regulates the construction of manufactured homes in the United States. There are approximately

35 to 36 states that have contracts with HUD to serve as liaisons by which to enforce provisions of the manufactured housing construction and safety standards as well as the manufactured home procedural and enforcement regulations, as well as the National Manufactured Housing Construction Safety Standards Act of 1974.

In that capacity Michigan, being one of those liaisons, serves as a state administrative agency which is to serve as Michigan's enforcement arm, so to speak, for HUD in handling consumer complaints that are filed by consumers that allege that their homes are not constructed in accordance with federal standards. And as an SAA we also review the in plant records of in-state manufactured home producers to make sure that their records are kept in accordance with federal regulations.

Q. And when you say we, the state agency that administers construction and safety standards under the federal act and federal regulations is this division?

A. Correct.

Q. Is there any other division within state government that you know of that acts as a state agency for these specific purposes?

A. No. (Dep. pp. 13-16)

Mr. DeGroat detailed the various inspection schemes of the Federal Regulations and Act. First, there is the State Administrative Agency ("SAA"), the same Michigan State Manufactured Housing Division. ("State Agency"). This division deals with complaints that mobile homes are not constructed to Federal Standards. The State Agency inspects the mobile home to determine if it was constructed to the standards in effect on the date of its construction. The State

Agency does not and can not make a retroactive inspection. That is, the State of Michigan never inspects a mobile home to determine if it is in compliance with "current HUD standards".

Q. Mr. DeGroat, how would an owner of a mobile home obtain an inspection that the mobile home complied with current HUD standards of construction and safety?
A. I don't know how they would.
Q. When you say you don't know, is it because you have never heard of this being done or is it because that there is something into the scheme of regulation nspection that would make it impossible?
MR. SALSTROM: Objection, leading.
BY MR. FLINTOFT:
Q. Well, he said he never heard. So when you say you have never heard, you mean you have never heard of it being done?
A. That's correct. Under the federal regulations the way that they are structured, my understanding is that the HUD standards and regulations are directed toward production facilities, specifically the factories in which these homes are produced. So to retroactively provide HUD certification or verification of a home that has been produced to, and I believe the language is "to current HUD standards," I don't know that that, given the structure of the program, that that could be accomplished given the staffing of the HUD program and the way in which it's arranged. (Dep. pp.17-18)

There are inspection schemes for warranty disputes (SAA) and plant design review (DAPIA). Again there is no provision in Federal Code for retroactive inspection to determine if a home is compliant with "current standards". The inquiry by

the State Inspector is only that it met the standards as of the date of construction.(Dep. pp.19-23)

The Design Approval Plant Inspection Agency ("DAPIA") is an independent non-governmental third party, inspection agency. That agency inspects mobile homes after manufacture to determine that the mobile home was constructed in accordance with the design approval given at the date of manufacture. A DAPIA never does a retroactive inspection to determine if a mobile home is compliance with "current HUD standards". There are no DAPIA's in Michigan. (Dep. pp. 19-22)

In sum, Mr. DeGroat knew of no way that Mr. and Mrs. Bailey could get an inspection or certification to be compliant with Bunker Hill Township regulation that their home is compliant with "current HUD standards", short of a complaint by the consumer/owner.

Q. When you go out and inspect a mobile home pursuant to these complaints, the construction standard you say is the construction standard to which it was built. Do I understand by that that you do not do a retrospective inspection from current standards or do you use current standards and determine whether or not it was built to those standard? Which standards are being employed here?
A. Well, it would depend on the year of the home. But in the event of an older home, we would examine the standards to which that home was built, as distinguished from, say, standards that had been recently amended after the home was produced.
Q. Is there ever an instance in which someone from this division would be inspecting a home to current or amended standards, postconstruction standards?
A. No. Not in terms of the federal regulations. (Dep. pp. 22-23)

Mr. DeGroat testified at length that there is no provision under the Michigan Mobile Home Commission Act, the regulation promulgated by the State pursuant to said Act, or to his knowledge any other Michigan Regulatory Enactment, which recognizes or refers to in any manner, an alleged right by a Township to inspect a mobile home.

With regard to the Township Regulations for inspection to "current HUD" regulations, Exhibit 2, above, he focused on the issue of preemption.

Q. Now, that reads, All mobile homes need to be inspected and CANNOT, in capitals, be brought into the township until they meet current HUD standards. Now, what do you understand that language to be saying?

A. Well, my reading of it would be that, number one, all manufactured homes need to be inspected. And if they do not meet the latest edition of the HUD standards, then one could not bring them into the township.

Q. You said in the last sentence of your full paragraph on Exhibit D-2 something to the effect that these standards supersede all state and local building codes and procedures pursuant to section so and so the National Manufactured Housing Commission and Safety Standards Act of 1974.

A. Correct.

MR. SALSTROM: For the record, section so and so? Or does he actually --

MR. FLINTOFT: Well, excuse me. Thank you, Mr. Salstrom, for bringing my lapse to the attention of the reporter. I will read the whole sentence.

Your last sentence there in the full paragraph says, These standards supersede all state and local building codes and procedures pursuant to

Section 604(d) of the National Manufactured Housing Commission and Safety Standards Act of 1974.

Q. Sir, when you say that these regulations, are you referring to the federal regulations?

A. Yes.

Q. When you say supersede all local building codes, are you referring to local ordinances?

A. Well, local building codes. Depending on whether ordinances -- I mean, you know, to say ordinance, I think you have to be more specific.

Q. Okay. An ordinance deals with construction?

A. Well, yes, that would be accurate.

Q. In Bunker Hill Township, these two sentences that we have discussed require a current HUD inspection. Is there a federal, not a local standard but a federal standard, that requires a current HUD inspection after manufacture?

A. Not to my knowledge.

Q. Is there anyplace to your knowledge, your working knowledge, and we don't expect you to be exhaustive on the Federal Code of Regulations, but in your working knowledge since 1981 have you ever had a situation where you learned that the federal code required a current post construction inspection?

A. I'm not aware of any such regulation.

Q. I think I have asked this before, but at this point I would like to ask it again. Do you know of any person in your 18, 19 years here, 20 years almost, who could do a post construction inspection and certify to the owner and certify to Bunker Hill Township that a mobile home was constructed to current standards?

A. No. (Dep. pp. 29-30)

Mr. DeGroat detailed the conflict between Bunker Hill

Township's enforcement standard and the Federal standard:

Q. Is there anybody that's under a contractual relationship that you know of with HUD who could do an inspection on a manufactured housing unit in Michigan on private land, or even in a park, to determine that the home meets current HUD standards, construction and safety standards?
A. I just want to see if I understand your question. Are you talking about a retroactive inspection?
Q. I am.
A. Okay, I know of no agency that would be able to determine that in retrospect.
Q. I have asked this before and I think your testimony was that you know of no person that could do an inspection specifically, correct? Because you don't know of anyone that has done this?
A. Right.
Q. You know of no agency, municipal agency, state agency, or federal agency, in fact, that can do this retroactive inspection to HUD standards?
A. Not that I'm aware of.
Q. .....
You don't know of anybody, anybody who could on behalf of HUD certify that a constructed manufactured housing unit conforms to now current or retroactively housing for standards for safety and construction?
A. Not that I'm aware of.
Q. Do you know how Mr. and Mrs. Bailey could comply with Bunker Hill Township's requirement?
A. I'm not certain. I really don't know, you know, how they could obtain retroactive certification. (Dep. pp. 43-45)

STIPULATED EXHIBIT #7 - a.
Ed Roark letter to Mr. & Mrs. Bailey dated June 6, 2000
[hand printed]

6-13-00

Don,

Please find attached Info. & Bunker Hill Regulations on mobile Homes you requested.

The latest Requirement by HUD was in 1994, but there may be several additions to HUD Requirements since your mobil home was built.

What the Twp. Regulation says is if HUD will inspect & give written verification of ok to the twp. That's sufficient. If they will not inspect or give verification then the twp cannot issue a building permit.

Thanks
SEd. Roark
twp supervisor

STIPULATED EXHIBIT #7 - b.
Don/Glenda Bailey letter to Mr. Roark dated June 20, 2000.
[hand printed]

pg.1

Mr. Ed Roark 6-22-00
Bunkerhill Township Supervisor

We have tried (unsucessfully) several times to obtain a permit from the township to move our mobile home from Haynes Rd in Bunkerhill Township to Parman Rd in Bunkerhill Township. You told us that we needed a HUD Inspection on our mobile home before we could move it. We called the "Manufacturing Housing & Land Development Division" AND the "State of Mich-Dept. Of Consumer & Industry" in Lansing. We were told by both places that there is no such program from HUD that comes out and inspects mobile homes. The HUD inspection and approval is done when the mobile home is manufactured. If you need

[page1]

6-22-00

to verify this information - you can call Kevin DeGroat at the Manufacturing Housing & Land Development Division at 1-517-241-6308. We have a compliance certificate posted inside our mobile home - saying that HUD inspected & approved the mobile home when it was built. We were also informed that any inspections (electrical, plumbing - etc.) are to be made by the townships elected officials. We are trying to do things in the right way. Please respond back.

Thank you,
Don & Glenda Bailey
766 Clark Rd.
Dansville, MI 48819
1-517-623-0157

STIPULATED EXHIBIT #7 - c.
Larry Salstrom letter July 7, 2000

July 7, 2000

MR. AND MRS. DON BAILEY
766 Clark Road
Dansville, Michigan 48819

RE: Relocation of Mobile home
Your correspondence of 6-22-00

Dear Mr. and Mrs. Bailey:

I am writing as the Bunker Hill Township attorney in response to your letter of June 22, 2000 to the Township Supervisor, Mr. Roark. It is my understanding, from your letter and my discussion with Mr. Roark, that there is a mobile home that was, when installed, on Hanes Road in compliance with all Township Ordinances. Thus, that mobile home could stay on its current parcel. However, for any mobile home to be installed on a new parcel in Bunker Hill Township, the Township Ordinance clearly requires compliance to current HUD standards. The purpose of the Township Ordinance is to preclude vintage and outdated mobile homes from being brought into the Township and to keep homes that are added to parcels current in their standards as determined by HUD.

The Township is not in the business of inspecting mobile homes. If a mobile home is unable to obtain current HUD certifications, then it may not be placed on a new parcel on Harmon Road. It is not, however, precluded from continuing at its current location.

Very truly yours,
LARRY A. SALSTROM, P.C.
S/
Larry A. Saltrom
cc: Mr. Ed Roark

STIPULATED EXHIBIT #7 - d.
U.S. Housing Commissioner letter to Don/Glenda Bailey
dated July 28, 2000.

U.S. Department of Housing and Urban Development
Washington, D.C. 20410-8000

OFFICE OF THE ASSISTANT SECRETARY
FOR HOUSING-FEDERAL HOUSING COMMISSIONER

JUL 28 2000

Don and Glenda Bailey
766 Clark Rd.
Dansville, MI 48819

Dear Mr. and Mrs. Bailey:

This is in response to your telephone call on July 14, 2000, regarding the Federal Manufactured Housing Program.

On June 15, 1976, the Federal Manufactured Home Construction and Safety Standards became effective. All residential manufactured homes constructed after this date must comply with these Standards. While the Department of Housing and Urban Development (HUD) does not actually inspect and certify homes, each manufactured home is inspected once during its production by a third-party inspection agency, and throughout its production by the manufacturer's quality assurance personnel, in order to help assure compliance with the Standards. Further, manufacturers must confirm compliance with the Standards by attaching a certification label to each unit produced.

In your State, a State Administrative Agency (SAA), operating under an agreement with HUD, administers and enforces the Federal Manufactured Housing Program within

the State. The address and telephone number of that agency are noted below, for your information. We are also not aware of any Federal law or regulation which provides for the inspection of used manufactured homes for placement in a new location or after the sale of the unit. In these cases, manufactured homes generally fall under the jurisdiction of State and local authorities. You may wish to contact the SAA and seek assistance from them.

The extent to which the Department and the SAA can help you in resolving your complaint depends on the seriousness of the problems you have encountered. In cases where safety-related defects in homes create an unreasonable risk of injury or death to the occupants, manufacturers must correct the defects in a relatively short period of time. However, where serious hazards have not been created by defects caused by the manufacturing process, we cannot require manufacturers to correct them. In some of those cases, the manufacturers may be liable under warranty or consumer protection programs administered by agencies of your State government.

[page 1]

I hope this information will prove helpful. If you have any questions, please call Stuart Margulies at (202) 708-6409.

Sincerely,

S/

Elizabeth A. Cocke
Director
Manufactured Housing and
Standards Division

cc:
Mr. Richard VanderMolen
Department of Consumer and Industry Services
Manufactured Housing Division
6546 Mercantile Way
Lansing, MI 48909
Telephone: (517) 241-6300

STIPULATED EXHIBIT #7 - e.
Don/Glenda Bailey letters to Michigan Manufactured Housing Section, Department of Consumer and Industry and Kevin DeGroat,
letter of July 20, 2000 and repeated on November 20, 2000.

[hand printed letter]

1-517-241-6301

Mr. Kevin Degroat

I talked to you about a week or so ago on the phone. We are trying to move a 1984 Schultz 14x70 mobile home from 1 parcel of land to another in the same township. Our township supervisor said we have to get it inspected by Hud and you told us there is no such program. Hud inspects it when it is manufactured. There is a compliance certificate inside the M.H. that has a Hud # & who is was approved by. We just received a letter from the township attorney about the mobile home. I am sending that letter & a letter that was sent to us by the twp supervisor. I sent a letter to him on 6-22-00 explaining everything to him - but we still got the letter from the attorney. Is there any way that you could help us OR point us in the right direction.
Thank - you

Don & Glenda Bailey

STIPULATED EXHIBIT #7 - f.
Michigan Manufactured Housing Section, Department of Consumer & Industry Services, Kevin DeGroat letter to Glenda Bailey dated November 21, 2000.

November 21, 2000

Mrs. Glenda Bailey
766 Clark Rd.
Dansville, MI 48819

Dear Mrs. Bailey:
RE: Your 11/20/00 Fax

Regarding your fax letter concerning a township request for a HUD inspection of a 1984 manufactured/mobile home, please be advised that neither HUD nor its agents conduct local building inspections. Moreover, HUD has no program for dispatching personnel to every location to conduct routine reconfirmation inspections for already-certified manufactured homes, unless the inspection is done pursuant to a federal investigation. The HUD certification label required to be affixed to all manufactured homes constructed in the U.S. on or after June 15, 1976, is attached to each home at the point of manufacture, under Section 3280.11 of the federal HUD standards, and serves as official federal verification that the home was built to the federal manufactured home construction and safety standards. These standards supersede all state and local building codes and procedures, pursuant to Section 604(d) of the National Manufactured Housing Contruction and Safety Standards Act of 1974.

I trust that this letter clarifies the federal manufactured home certification process. If you have any questions, please contact me.

Sincerely
S/_____
Kevin G. DeGroat

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

BUNKER HILL TOWNSHIP,
Plaintiff

v

ARTHUR ALLEN and
DONALD BAILEY,
Defendants.

OPINION AND ORDER
File No. 00-92513-CZ

/

At a session of said Court held in the City of Lansing, Ingham, County, Michigan, on the 8th day of March, 2002, the Hon. Thomas L. Brown presiding.

This matter is before the Court on the parties' agreement that, in lieu of trial, the Court determine the disposition of Plaintiff's nuisance-in-fact claim based on the briefs, stipulated facts and record, stipulated exhibits, and Mr. Kevin DeGroat's deposition testimony. Having fully reviewed this matter, the Court makes the following determinations.

On February 15, 2001, Plaintiff filed a three-count Amended Complaint seeking injunctive relief and alleging that Defendants violated Township regulations (Count I), violated the Township's Zoning Ordinance resulting in a nuisance per se (Count II), and created a nuisance in fact (Count III). According to the Amended Complaint, Plaintiff avers that Defendants have failed to meet various federal requirements related to, *inter alia*, construction and safety standards for mobile homes.

[Page 1]

A review of the case file indicates that the parties have

stipulated to the following facts.

The Department of Housing and Urban Development (HUD) is required by federal law to establish Federal Manufactured Home Construction and Safety Standards. [1] This requirement was complied with by HUD, and the standards were codified at 24 CFR 3280.1 *et seq.*[2] Additionally, Bunker Hill Township is required by federal law and regulations to adopt and continue in effect mobile-home standards identical to the federal standards.

Pursuant to 43 USC 5403(d):

> Whenever a Federal manufactured home construction and safety standard established under this chapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard.

Furthermore, 24 CFR 3282.11 provides, in part:

> (a) No State manufactured home standard regarding manufactured home construction and safety which covers aspects of the manufactured home governed by the federal standards shall be established or continue in effect with respect to manufactured homes subject to the Federal standards and these regulations unless it is identical to the Federal standards.
>
> .....

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[1] *See* 43 USC 5403(a)

[2] Amended October 25, 1994.

(d) No State or locality may establish or enforce any rule or regulation or take any action that stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress. The test of whether a State rule or action is valid or must give way is whether the State rule can be enforced or the action taken without impairing the Federal superintendence of the manufactured home industry as established by the Act.

[Page 2]

Additionally, Section 7, subsection 6, of the Mobile Home Commission Act (MHCA), MCL 125.2301 *et seq;* MSA 19.855(101) *et seq,* provides as follows:

A local government ordinance shall not contain roof configuration standards or special use zoning requirements that apply only to, or excludes, mobile homes. A local government ordinance shall not contain a manufacturing or construction standard that is incompatible with, or is more stringent than, a standard promulgated by the federal department of housing and urban development pursuant to the national manufactured housing construction and safety standards act of 1974, 42 USC 5401 to 5426. A local government ordinance may include reasonable standards relating to mobile homes located outside of mobile home parks or seasonal mobile home parks which ensure that mobile homes compare aesthetically to site-built housing located or allowed in the same residential zone.

[MCL 125.2307(6); MSA 19.855(107)(6).][3]

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[3]Although the parties have stipulated to the language of Section 7(6), they disagree as to the applicability of the MHCA to the instant matter. The Court observes, however, that "the MHCA. . . was designed to regulate and provide for

According to Bunker Hill Township's 1981 Zoning Ordinance, all mobile homes whose location is changed within the Township, or which are brought into the Township to replace an existing mobile home, must comply with current United States HUD standards. These standards are set forth in Section 11.13 of the Township Zoning Ordinance. Said section provides, in part:

> All single-family dwelling units, including mobile and modular homes, to be constructed or located in Bunker Hill Township shall conform to all standards listed below. These standards shall apply to all one-family living units built or brought into the Township, those whose location is changed within the Township or on a lot, and those dwellings, moblie [sic] homes, or modular homes which replace an existing mobile home, modular home or dwelling.
>
> .....
>
> [Page 3]
>
> H. All dwelling units shall meet the minimum construction and safety standards of the Michigan Mobile Home Commission, the Michigan State Construction Code, the Department of Housing and Urban Development, or the Farmers Home Administration, whichever may be applicable.

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minimum construction and safety standards with regard to mobile home businesses and parks." *Silver Creek Twp v Corso*, 246 Mich App 94, 97; 631 NW2d 346 (2001). *See also Gackler Land Co, Inc* v *Yankee Springs Twp*, 427 Mich 562, 580; 398 NW2d 393 (1986) (stating that "the rules which are to be promulgated under that act related to the construction of mobile home *parks* and the regulation of mobile home *industries*." (Emphasis supplied)).

According to the stipulated facts, Defendants own a 1984-built Schult mobile home, which was originally lawfully permitted and located on a parcel of land in Bunker Hill Township. The mobile home was, however, relocated to a different parcel of land within the Township; a parcel owned by Defendant Arthur Allen. Because of said relocation, Plaintiff asserts that the mobile home is subject to the Township Zoning Ordinance, and that the mobile home must comply with the current minimum HUD-mandated standards.

Mr. Allen's parcel of land was, at all relevant times, zoned: "Single Family Residential;" a designation which includes mobile homes. Although Mr. Allen's parcel had been vacant since early 1999, a single-family residential mobile home had previously been situated on the land. In September 2000, the 1984-built Schult mobile home was moved to Mr. Allen's land. Said mobile home was built according to BUD standards in effect at the time of its construction in 1984.

Nevertheless, as a result of the October 24, 1994 amendment to 24 CFR 3280.1 *et seq.* the mobile home did not comply with the HUD standards in effect at the time of its relocation. Specifically, the mobile home did not meet: current minimum construction-and-safety light and ventilation standards;[4] current minimum construction-and-safety attic and roof ventilation standards;[5] and current insulation standards.[6]

[Page 4]

To assure that both federal and state laws are complied

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[4] *See* 42 CFR 3280. 103

[5] *See* 42 CFR 3280.504(c).

[6] *See* 42 CFR 3280.506.

with, the Michigan Consumer and Industry Services Division of the Manufactured Housing and Land Development Division is authorized to inspect mobile homes which are suspected of violating HUD minimum construction and safety standards. However, no such inspection is available to the general public for purposes of verifying compliance with HUD standards within cities or townships. Nor is such inspection available for mobile homes located outside of mobile-home parks.

Nevertheless, Bunker Hill Township does not preclude the relocation of Defendants' mobile home to either a mobile-home park or to a location outside the Township.[7] Additionally, the Township does not preclude the sale of the mobile home. The parties agree that Mr. Allen's property may continue to be used for purposes of placing a single-family residence thereon, including a mobile home or site-built home.

According to the trial briefs, the parties dispute whether the Township's Zoning Ordinance is an invalid *per se* regulation. Pursuant to *Bell River Assoc v China Twp*, 223 Mich App 124, 129-30; 565 NW2d 695 (1997):

Ordinances are presumed to be valid and constitutional.... To prevail on a substantive due process theory, a [party] must prove that the zoning classification advances no reasonable governmental interest . . . . A [party] also must show "that the ordinance is an arbitrary and unreasonable restriction upon the owner's use of his property" so much so that "[i]t must appear that the clause attacked is an arbitrary fiat, a whimsical *ipse dixit*, and that there is no room for a legitimate difference of opinion concerning its reasonableness." (Quoting *Gackler, supra n.3*, at 571).

Moreover, according to *Robinson Twp v Knoll*, 410

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[7]The Court notes that Bunker Hill Township does not have a mobile-home park

Mich 293,310; 302 NW2d 146(1981): "A mobile home may be excluded if it fails to satisfy reasonable standards designed to assure

[Page 5]

favorable comparison of mobile homes with site-built housing which would be permitted on the site, and not merely because it is a mobile home."

Defendants argue that a *per se* exclusion exists because only mobile homes, and not any other type of housing, are required to meet "current" standards. Further, that Plaintiff's regulation exceeds the "reasonableness" standard by requiring mobile hones (at all times) to meet current, updated standards.

Plaintiff responds that, unlike *Robinson Twp. supra,* Bunker Hill Township's regulatory scheme does not create a blanket exclusion. In other words, any home (whether stick-built or manufactured) which is newly placed on a parcel of land within the Township must meet current standards.

In light of the language provided under Section 11.13 of the Township's Zoning Ordinance, quoted above, as well as the facts stipulated to by the parties, the Court finds that the ordinance expressly provides that the regulation applies to all single-family dwelling units, including mobile homes. Moreover, the Court is of the opinion that *Robinson Twp, supra,* is distinguishable from the instant matter.

Whether we are dealing with stick-built homes, modular homes, or mobile homes, the Court agrees with Plaintiff that if such single-family dwelling units are, *inter alia,* relocated within the Township, they must all meet the applicable current construction and safety standards. The Court rules, therefore, that Bunker Hill Township's regulation is not invalid as a *per se* regulation.

The parties next dispute whether the ordinance is preempted by, or otherwise in violation of, federal law. Defendants argue that the federal standards are enforced only by federal agencies or by approved state agencies, such as the Michigan Manufactured Housing Commission. Further, that there is no HUD regulation requiring current inspections in order to move an older home. Curiously,

[Page 6]

Defendants state at page 7 of their trial brief that "[t]he HUD Code does forbid resale or relocate [sic] of non-current homes." Regardless, Defendants contend that Plaintiff has crafted its own standard regulation, thereby entering a field which even the State of Michigan has declined to enforce. Defendants cite for support *toBellRiverAssoc, supra; Gackler, supra;* and *Michigan Manufactured HousingAss'n vRobinson Twp,* 73 F Supp 2d 823 (W D Mich 1999).

Plaintiff responds, however, that Congress did not preclude all state and local regulation but, instead, regulations which are "not identical" to the federal standard. Further, that the Township conforms with federal law by requiring compliance with current RUD standards for manufactured homes newly placed on parcels of land, and that the ordinance refuses to continue in effect any construction and safety standard not identical to the *current* HUD construction and safety standard. Plaintiff maintains, therefore, that Defendants are urging this Court to require compliance with an older, outdated standard which is not identical to the current federal standard.

In support of its argument, Plaintiff cites to *Gackler*, supra; *Michigan Manufactured Housing Ass'n, supra; Gustafson v City of Lake Angelus*, 76 F3d 778 (6th Cir 1996); and *Scurlock v City of Lynn Haven, Fla.* 858 F2d 1521 (11th Cir 1988). Plaintiff additionally states that the Township's

requirement - that a dwelling moved onto a parcel of land must meet the minimum HUD construction and safety standards - is a land-use regulation which is not preempted.

In construing a statute, the Court is required to ascertain and give effect to the Legislature's intent. *Reardon v Dep't of Mental Health,* 430 Mich 398, 407; 424 NW2d 248 (1988). If the language of the statute is clear and unambiguous, the plain meaning of the statute reflects the legislative intent and judicial construction is not permitted. *Tryc vMichigan Veterans 'Facility,* 451 Mich 129, 136; 545 NW2d 642 (1996). In such cases, the Court is required to simply apply the statute as written. *Turner v Auto Club Ins Ass'n,* 448 Mich 22, 27; 528 NW2d 681(1995).

[Page 7]

Although the *Scurlock* opinion is not binding on this Court, the case does present a persuasive analysis of the federal-preemption argument. As stated therein: "The language of [42 USC 5403(d)] clearly precludes states and municipalities from imposing *construction and safety* standards upon mobile homes that differ in any respect from those developed by HUD." *Scurlocle, supra,* at 1524 (footnote omitted) (emphasis supplied). Further, "[a]ccording to Congress, the purposes of the Act 'are to reduce the number of personal injuries and deaths and the amount of insurance costs and property damage resulting from [mobile] home accidents and to improve the quality and durability of [mobile] homes." *Id.* (quoting 42 USC 5401).

The Court has extensively reviewed the parties' respective briefs, in conjunction with the proffered case law and deposition transcript of regulatory specialist DeGroat. Although the Court initially ruled in its June 28, 2001 Opinion and Order that there appears to be no mechanism in place whereby Defendants can comply with the Township's Zoning

Ordinance, the Court must now agree with Plaintiff that the Township has no duty to provide Defendants with such a mechanism. Rather, the Township merely permits Defendants to utilize any method to bring theft mobile home into compliance with current HUD standards.

In one respect, the Court agrees with Defendants that their mobile home previously complied with the HUD standards. Had the mobile home remained on its original parcel of land, Plaintiff clearly would not have had cause to argue non-compliance with the ordinance. In this regard, the Court applies *Bunker Hill Twp v Goodnoe*, 125 Mich App 794, 797-98; 337 NW2d 27 (1983), wherein the Court of Appeals opined as follows:

> [T]he ordinance in question applies only to mobile homes moved into the township or located within the township after the effective date of the ordinance. Any mobile home which failed to comply with the ordinance but which was situated within the township at the time the ordinance was adopted is not governed by its provisions."

[Page 8]

According to The American Heritage Dictionary 1211(1980), "situate" is defined, in part, as to "place in a certain spot or position." In the instant matter, the underlying fact remains that Defendants moved their mobile home to a new site within the Township. Consequently, the relocation triggered anew the ordinance's construction and safety requirements. Accordingly, the Court is of the opinion that the ordinance is not preempted by, nor is otherwise in violation of; federal law. Moreover, by allowing Defendants' newly situated mobile home to retain its compliance with the pre-amendment HUD requirements, the Township will be continuing in effect an outdated regulation; a proposition clearly prohibited by

federal law.

As for the parties' equal-protection argument, Defendants cite to, and rely upon, *Goodnoe, supra,* to support the proposition that the zoning ordinance violates equal protection. Defendants, however, have presented little argument to persuade the Court that mobile homes are being regulated in a dissimilar fashion than "conventional" homes. The Court disagrees with Defendants' assertion that the regulation is an attempt to force the removal of older mobile homes from the Township. Rather, the Court agrees with Plaintiff that the Township applies a uniform regulatory standard equally applicable to mobile, modular, and stick-built homes.

Having fully reviewed the arguments presented, and having considered the case law cited by the parties along with the proffered exhibits, the Court rules in favor of Plaintiff as to Count III of the Amended Complaint.

IT IS ORDERED, therefore, that Plaintiff's request for a preliminary injunction is GRANTED.

S/_____
Hon. Thomas L. Brown Circuit Judge

[Page 9]

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

BUNKER HILL TOWNSHIP,
Plaintiff OPINION AND ORDER

v

ARTHUR ALLEN and DONALD BAILEY, File No. 00-92513-CZ

Defendants.
_____/

At a session of said Court held in the City of Lansing, Ingham County, Michigan, on the 25th day of April, 2002, the Hon. Thomas L. Brown presiding.

This matter is before the Court on Defendants' Motion for Clarification of the Court's March 8, 2002 Opinion and Order wherein a ruling wasgranted in Plaintiff's favor as to Count III (nuisance in fact) of the Amended Complaint. Defendants, however, now request that the Court delete reference to Count III from the March 8th Opinion and Order because the Court ruled in favor of Plaintiff's legal theories as to Count I (violation of Township regulations), and Count II (nuisance per se). The Court fails to see the logic of this request.

Pursuant to Paragraph 16 of the parties' Stipulated Facts and Record: "The parties agreed that the legal issue of 'nuisance-in-fact' is to be decided on the Stipulated Record and Stipulated Exhibits." Because said legal issue was designated as Count III of the Amended Complaint, the Court rendered its decision accordingly.

[Page 1]

Additionally, pursuant to Paragraph 18 of the Stipulated Facts and Record: "There are no other

zoning/building/occupancy/ordinance issues, or other issues, to be submitted to the Court for consideration. If later issues arise between the parties, they will be submitted at a later date." Regardless of this language, the Court rendered its decision after careful review of all issues submitted by the parties in their respective trial briefs.[1] Whether the March 8, 2002 Opinion and Order supports a favorable or unfavorable ruling regarding any other count of the Amended Complaint is a result of the issues and arguments presented in the trial briefs. Defendants' request to delete reference to Count III is, therefore, denied.

Defendants also argue that the March 8th Opinion and Order did not expressly order the removal of the mobile home at issue from the real property, and that clarification is necessary as to the Court's ruling which granted Plaintiff's request for a preliminary injunction. It must be noted that on February 4, 2002, Plaintiff filed a Motion for Preliminary Injunction seeking, *inter alia,* a court order "enjoining the Baileys from further occupancy of the mobile home [and] requiring the immediate vacating of the mobile home...." Oral argument regarding this motion was heard on February 19, 2002, at which time the matter was taken under advisement.

The March 8th Order granted the requested preliminary injunction. The Court did not order a permanent injunction because the parties left open the possibility that additional issues might be submitted at a later date. As such, issuing a

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[1]The following arguments were presented for the Court's consideration: Whether the Township's Ordinance: (1) was federally preempted; (2) violated equal protection; (3) constituted a taking; (4) constituted a non-conforming use; (5) was an invalid per-se regulation; and (6) was contrary to law. *See* Plaintiff's and Defendants' Trial Briefs; Plaintiff's Reply Brief. (Defendant did not file a reply brief).

permanent injunction in the March 8th Opinion and Order would have been premature.

[Page 2]

Turning to Plaintiff's proposed "Final Judgment and Permanent Injunction" order, Defendants object to said order on the basis that the Court did not require the removal of the mobile home from Mr. Allen's property. Defendants are correct in this regard. The issue of whether the Court may legally order the removal of said mobile home from the property was not fully and adequately addressed by the parties in their trial briefs. Further clarification of the Court's March 8, 2002 Opinion and Order is unnecessary.

IT IS ORDERED, therefore, that Defendants' request for clarification is GRANTED in part and DENIED in part for the reasons stated herein.

IT IS FURTHER ORDERED that the Court's previous preliminary-injunction ruling is AFFIRMED and, consistent with the Opinion and Order dated March 8, 2002, Defendants are required to vacate the mobile home forthwith

S/_____

Hon. Thomas L. Brown Circuit Judge

[Page 3]

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

BUNKER HILL TOWNSHIP,
Plaintiff

v

ARTHUR ALLEN and
DONALD BAILEY,
Defendants.

PRELIMINARY INJUNCTION
File No. 00-92513-CZ

/

At a session of said Court held in the City of Lansing, Ingham County, Michigan, on the 10th day of May, 2002, the Hon. Thomas L. Brown presiding.

This matter having come before this Court upon the parties' Stipulated Facts and Record, Stipulated Exhibits, Mr. DeGroat's Deposition testimony, and the pleadings and Briefs filed in this matter; and, the Court having entered an Opinion and Order dated March 8, 2002, and an Opinion and Order dated April 25, 2002; for the reasons set forth in said Opinions and Orders:

IT IS HEREBY ORDERED AND ADJUDGED that a PRELIMINARY INJUNCTION is here issued requiring Defendants, ARTHUR ALLEN and DONALD BAILEY, and their agents, servants and employees and those in active concert or participation with them who have knowledge of this Order, to immediately vacate and not further occupy the mobile home that is the subject matter of this dispute, unless and until modified by a subsequent Order of this Court.

S_____
Hon. Thomas L. Brown Circuit Judge
STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

BUNKER HILL TOWNSHIP,
Plaintiff

v

ARTHUR ALLEN and
DONALD BAILEY,
Defendants.

ORDER
File No. 00-92513-CZ

/

At a session of said Court held in the City of Lansing, Ingham County, Michigan, on the 5th day of June, 2002, the Hon. Thomas L. Brown presiding.

Defendants having filed a Motion for Reconsideration pursuant to MCR 2.119(F) of the Court's May 10, 2002 Order, and having failed to demonstrate palpable error, and the Court having been fully apprised of the premises.

IT IS ORDERED that Defendants' motion is DENIED.

S/_____
Hon. Thomas L. Brown Circuit Judge

STATE OF MICHIGAN
COURT OF APPEALS

BUNKER HILL TOWNSHIP	UNPUBLISHED
	November 9, 2004
Plaintiff-Appellee,	No. 249353
v	Ingham Circuit Court
	LC No. 00-092513-CZ
ARTHUR ALLEN and DONALD BAILEY,	
Defendants-Appellants	

/

Before: Cooper, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Defendants Arthur Allen and Donald Bailey appeal as of right a permanent injunction ordering the removal of a mobile home from a lot located in plaintiff Bunker Hill Township. We affirm.

I. Factual and Procedural History

Mr. Bailey and his wife own a 1984 mobile home that was manufactured in compliance with United States Department of Housing and Urban Development ("HUD") standards in effect in 1984. However, the mobile home does not comply with amendments made to HUD construction and safety standards for mobile homes in 1994. In 1999, Mr. Bailey moved the home from one lot to another owned by Mr. Allen within the township. This move violated Plaintiff's zoning ordinance which requires that all mobile homes that are moved within the township must comply with current HUD standards.[1]

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[1]Plaintiff's zoning ordinance provides in pertinent part:

All single-family dwelling units, including mobile and modular homes, to be constructed or located in Bunker Hill Township shall conform to all standards listed below. These

Because defendants failed to have the

mobile home inspected and certified as meeting current HUD standards, they could not obtain building and occupancy permits as required by Plaintiff's ordinance. Plaintiff sought an injunction requiring defendants to remove the mobile home from the lot. The trial court granted a permanent injunction on January 10, 2003, and held that the ordinance was not preempted by federal or state law, nor did it violate defendants' right to due process.[2]

II. Preemption

Defendants contend that Plaintiff's ordinance is preempted by the National Manufactured Housing

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standards shall apply to at l one-family living units built or brought into the Township, those whose location is changed within the Township or on a lot, and those dwellings, moblie [sic] homes or modular homes which replace an existing mobile home, modular home or dwelling...

H. All dwelling units shall meet the minimum construction and safety standards of the Michigan Mobile Home Commission, the Michigan State Construction Code, the Department of Housing and Urban Development, or the Farmers Home Administration, *whichever may be applicable.* [Bunker Hill Township Zoning Ordinance of 1981, § 11.13 (emphasis added).]

[2]Defendants sought leave to appeal to this Court following the entrance of a preliminary injunction on March 8, 2002, ordering them to vacate the mobile home. This Court denied defendants' requests for leave to appeal and to stay that injunction. *Bunker Hill Twp v Allen,* unpublished order of the Court of Appeals, entered July 22, 2002 (Docket No. 242192).

Construction and Safety Standards Act (the federal act),[3] and by the Michigan Mobile Home Commission Act (the "MHCA").[4] We disagree. The determination of whether a local law is preempted by federal or state law is a question of statutory construction which we review de novo.[5]

"Congressional intent to preempt state or local law can be explicitly stated in the statute or implied through comprehensive legislation or a conflict between the state and federal law."[6] The preemptive reach of the federal act is express:

> Whenever a Federal manufactured home construction and safety standard established under this title is in effect, no State or political subdivision of a State shall have any authority either to establish, or continue in effect, with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which
>
> [Page 2]
>
> is not identical to the Federal manufactured home

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[3] 42 USC 5401 *et seq.*

[4] MCL 125.2301 *et seq.*

[5] *Konynenbelt v Flagstar Bank, FSB*, 242 Mich App 21, 27; 617 NW2d 706 (2000).

[6] *Michigan Manufactured Housing Ass'n v Robinson Twp.* 73 F Supp 2d 823 (WD Mich, 1999), citing *Michigan Canners & Freezers Ass 'n v Agricultural Mktg & Bargaining Bd.* 467 US 461, 469; 104 Sct 2518; 81 LEd2d 399(1984).

construction and safety standard.[7]

HUD has further defined the scope of preemption in 24 CFR § 3282.11(d):

> No State or locality may establish or enforce any rule or regulation or take any action that stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. The test of whether a State rule or action is valid or must give way is whether the State rule can be enforced or the action taken without impairing the Federal superintendence of the manufactured home industry as established by the Act.[8]

Furthermore,

> Federal preemption under this subsection shall be broadly and liberally construed to assure that disparate State or local requirements or standards do not affect the uniformity and comprehensiveness of the standards promulgated under this section nor the Federal superintendence of the manufactured housing industry as established by this title.[9]

If a state or local ordinance is consistent with HUD requirements dealing with construction and safety or regulates on another basis, then that ordinance is not preempted by the federal act.[10] The township's zoning ordinance requires nothing

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[7]42 USC 5403(d).

[8]24CFR § 3282.11(d).

[9]42 USC § 5403(d).

[10]See *Michigan Manufactured Housing Ass 'n, supra* at 826, citing *Georgia Manufactured Housing Ass 'n v Spalding Co.* 148 F3d 1304, 1310 (CA 11, 1998), *Texas Manufactured Housing Ass 'n v City of Nederland,* 101 F3d 1095, 1100 (CA 5, 1996), and *CMH Mfg. Inc v Catawba Co.*

more than compliance with the minimum construction and safety standards of HUD. Therefore, it is not preempted by the federal act.

We also reject defendants' contention that Plaintiff's ordinance is preempted by state law. The MHCA provides that a local unit of government shall not establish higher standards for mobile home parks or businesses than those promulgated by the Mobile Home Commission

[Page 3]

without the Commission's approval.[11] Local ordinances "shall not be designed as exclusionary to mobile homes.[12] Furthermore,

> A local government ordinance shall not contain a... construction standard that is incompatible with, or is more stringent than, a standard promulgated by [HUD]... A local government ordinance may include reasonable standards relating to mobile homes located outside of mobile home parks . . . which ensures that mobile homes compare aesthetically to site-built housing located or allowed in the same residential zone.[13]

While the ordinance refers to construction and safety standards for all types of dwellings, including mobile homes, it does not require that mobile homes meet any standard more stringent than the current HUD standard. Therefore, the

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994 F Supp 697, 708 (WD NC, 1998).

[11]MCL 125.2307(2). Contrary to defendants' assertion, local ordinances which apply only to mobile homes outside of mobile home parks do not require Commission approval.

[12]MCL 125.2307(3).

[13]MCL 125.2307(6).

ordinance does not violate the MHCA.[14]

III. Due Process

Defendants further argue that Plaintiff's ordinance is, effectively, a per se exclusion of older mobile homes from the township in violation of the Due Process Clause.[15] We disagree. We review a ruling on a constitutional challenge to a zoning ordinance de novo.[16]

Substantive due process protects a claimant from the arbitrary deprivation of property or liberty interests.[17] For purposes of due process analysis, all local ordinances are initially presumed valid.[18]

[A] substantive due process claim requires the following proof:

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[14]Defendants also argue that Plaintiff's ordinance is invalid because neither state nor federal law authorizes post-construction inspections of mobile homes. However, defendants only support this assertion by effectively reiterating the preemption claim we have already rejected. Although neither HUD nor the Commission typically performs post-construction inspections on mobile homes, defendants could have had their home inspected by any competent professional to determine how the home could be altered to meet current HUD standards.

[15]15 Const 1963, art I § 17

[16]*Scots Ventures mc, v Hayes Twp*, 212 Mich App 530, 532; 537NW2d6l0 (1995).

[17]*Electronic Data Systems Corp v Flint Twp*, 253 Mich App 538, *549;* 656 NW2d 215 (2002).

[18]*Hecht v Niles Twp.* 173 Mich App 453, 458; 434 NW2d 156 (1988).

(1) that there is no reasonable governmental interest being advanced by the present zoning classification or (2) that an ordinance is unreasonable because of the purely

[Page 4]

arbitrary, capricious, and unfounded exclusion of other types of legitimate land use from the area in question. [19]

If, however, the ordinance is a total exclusion of a particular land use, either expressly or effectively, the burden shifts to the defendant to show that the ordinance is reasonable.[20]

As plaintiff permits mobile homes on any residential lot, there is no express exclusion of mobile homes as a class. Defendants argue that plaintiff has effectively excluded a certain subclass of mobile homes—those built before 1994. However, as the Michigan Supreme Court noted in *Robinson Twp v Knoll*,[21]

[A] municipality need not permit all mobile homes, regardless of size, appearance, qualify of manufacture or manner of on-site installation, to be placed in all residential neighborhoods. A mobile home may be excluded if it fails to satisfy reasonable standards designed to assure favorable comparison of mobile homes with site-built housing which would be permitted on the

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[19] *Frerick.s v Highland Twp*, 228 Mich App *575, 594; 579* NW2d 441 (1998).

[20] *Landon Holdings, Inc v Grattan Twp*, 257 Mich App 154, 175; 667 NW2d 93 (2003).

[21] *Robinson Twp v Knoll*, 410 Mich 293; 302NW2d 146 (1981).

site, and not merely because it is a mobile home.[22]

Furthermore, Plaintiff's zoning ordinance has already overcome a due process challenge, albeit for a different requirement in the ordinance. In *Bunker Hill Twp v Goodnoe,*[23] the defendants claimed that Plaintiff's ordinance, which required that all homes newly constructed or relocated in the township meet a fourteen-foot minimum width requirement, had no rational relationship to health, safety, or welfare.[24] This Court noted that fourteen-foot-wide mobile homes had become an industry standard and that "[c]onstruction of 12-foot-wide mobile homes is limited."[25] Because the ordinance exempted mobile homes already located in the township and because the industry standard had changed to one more compatible with site-built homes, the Court found that the ordinance was

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[22] ***Id.* at 310. For support, defendants cite the unpublished opinion of *Twp of Pittsfield v Borck*, unpublished opinion per curiam opinion of the Court of Appeals, issued December 19, 1997** (Docket No. *196165).* In *Pittsfield,* the ordinance forbid all mobile homes more than ten years old. *Id.* at 2. The panel found that an older mobile home may be as safe as a new one if it complies with *current* standards. *Id* As Plaintiff's ordinance permits any mobile home that meets current HUD standards, and defendants have not in fact improved their mobile home to meet these standards, the ordinance clearly has a rational relationship to safety.

[23] *Bunker Hill Twp v Goodnoe*, 125 Mich App 794; 337 NW2d 27(1983).

[24] *Id.* at 797.

[25] *Id.*

rationally related to Plaintiff's police power, and therefore, passed constitutional muster.[26]

In the current case, defendants are challenging the ordinance on similar due process grounds. Here, as in *Goodnoe*, construction standards have improved since the time defendants' mobile home was built, but the ordinance exempts mobile homes that are already situated in the township. As this Court has already found that Plaintiff's ordinance is rationally related to its police power, and as defendants' mobile home actually does not comply with current safety standards, defendants' due process challenge must fail.

Affirmed.

s/ Jessica R. Cooper
s/ E. Thomas Fitzgerald
s/ Joel P. Hoekstra

Court of Appeals, State of Michigan
ORDER

Bunker Hill Twp. v Arthur Allen	Jessica R. Cooper Presiding Judge
Docket No. 249353	E. Thomas Fitzgerald
LC No.00-09251 3-CZ	Joel P. Hoekstra
Judges	

The Court orders that the motion for reconsideration is DENIED.

s/_____
Hon. Jessica R. Cooper
Presiding Judge

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on December 29, 2004

s/_____
Sandra Schultz Mengel, Chief Clerk

Seal of the Court of Appeals, State of Michigan

Order
August 30, 2005

Michigan Supreme Court
Lansing, Michigan

127980

Clifford W. Taylor
Chief Judge
Michael E. Cavanaugh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Judges

BUNKER HILL TOWNSHIP,
Plaintiff-Appellee,

v

SC:127980
COA: 149353
Ingham CC: 00-092513-CZ

ARTHUR ALLEN and DONALD BAILEY,
Defendants-Appellants.

_____/

On order of the Court, the application for leave to appeal the November 9, 2004 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the question should be reviewed by this Court.

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

August 30, 2005 s_____
Corbin R. Davis, Clerk

Seal of the Michigan Supreme Court, Lansing

Summary of the changes to the Federal Manufactured Home Construction and Safety Standards since 1984.

Federal Register - August 9, 1984 (Effective February 11, 1985)

- Established maximum formaldehyde emission standards for specific products installed in homes (particleboard and plywood). [3280.308]

1. Exempted phenol-formaldehyde resins and surface finishes from testing and certification.
2. Does not cover medium density fiberboard (MDF).
3. Large air chamber test per FTM-2-1983 for product certification.
4. A health notice on formaldehyde emission must be displayed in new homes for sale and in the consumer's manual. [3280.309]

- Provisions for fire safety. [Subpart C]

1. New definitions for combustible, noncombustible and limited combustible materials, which affected their location in a home. [3280.202]
2. Provisions for increased flame spread requirements for interior ceilings. [3280.203]
3. Increased kitchen cabinet flame spread protection (bottom and sides). [3280.204]
4. Carpeting cannot be used underneath a furnace or water heater. [3280.205]
5. Increased firestopping provisions for floor-to-ceiling concealed spaces in walls or partitions, all openings or penetrations in walls, floors or ceilings; and, set minimum criteria for firestopping material. [3280.206]
6. Established requirements for foam plastic insulating materials in walls, ceilings or exposed in the interior of the home. [3280.207]
7. Modified smoke detector locations in homes, particularly for cathedral ceilings. [3280.208]

Federal Register - February 12, 1987 (Effective August 11, 1987)

- General update of 159 reference standards in HUD Code.
- Established that egress windows have approved exit devices per 3280.404. [3280.106]
- Established that all windows and sliding glass doors be installed to ensure proper operation and be provided protection from weather. [3280.403(c)]
- Established that egress windows to have minimum dimensions as required in new reference standard AAMA 1704-85. [3280.404(b)]
- Permitted manufacturer to self-certify that swinging exterior doors comply with referenced standards. [3280.405(e)]
- Deleted requirement that the drainage system outlet terminate in the rear half section of the home. [3280.610(c)]
- Established that the gas supply connections shall be installed in the home and deleted prescriptive requirements for location on home. [3280.705(j)]
- Updated reference to the 1984 National Electrical Code (NEC). [Subpart I]
- Deleted requirement that point of entrance of electrical feeder assembly must be in the rear third of home, permitting anywhere as long as protected. [3280.803(h)(1)]
- Established that electrical service equipment can be installed on the home in accordance with Article 230 of the NEC - 1984. [3280.803(k)(3)]

Federal Register - September 22, 1987 (Effective October 27, 1987)

- Modified the testing requirements for windows, sliding glass doors, and swinging exterior passage doors. [3280.403(c)(2) and 3280.405(e)(2)]
- Established modifications for electrical installation of hydromassage bathtubs. [3280.807(g)]

Federal Register - June 23, 1988 (Effective August 11, 1988)
- Established that for manufactured homes to be connected to public water systems, all water piping shall be lead-free, with solder and flux (not more than 0.2 percent lead, and pipe fittings less than 8.0 percent lead). [3280.605(a)(3) and 3280.609(d)(3)]

Federal Register - October 25, 1993 (Effective October 25, 1994)
- Upgraded the energy conservation requirements. [Subpart F]
1. Revised Uo value zone map for three zones for determination of minimum energy design for manufactured homes and made the corresponding Uo values more rigorous. [3280.506]
2. Revised whole house ventilation to be capable of providing a minimum of 0.35 air changes per hour; to be met by a combination of natural ventilation, a mechanical system, a passive system, or a combined mechanical and passive system. [3280.103]
3. Established attic and roof ventilation and installation of vapor retarders to provide condensation control in manufactured homes. [3280.504]
- General update of 170 referenced standards contained in HUD Code.
- Added definition of bay window for minimum square footage of home covered by MHCSS. [3280.2]
- Established new section on use of alternative construction as long as MHPER (24 CFR 3282.14) is followed. [3280.10]
- Required HUD to approve alternative test procedures. [3280.303(g)]
- Clarification that 1.5 safety factor only applied to the tie down system design and not the entire structure. [3280.306(a)]
- For structural load tests, a minimum safety factor of 2.5 is required for any ultimate load test certification. [3280.401(b)]
- Revisions to permit the use of high loops in the drain system

of dishwashers and clarification provided on the use of standpipes for dishwashers. [3280.607(b)(4)]
- Added criteria for the installation of whirlpool bathtub drainage systems. [3280.607(c)(6)]
- Established requirements for exterior hose bibs and laundry sink faucets with a hose connection to be protected by a listed non-removable backflow prevention device. [3280.609(b)(7)]
- Established requirements for flushometer tanks to be installed with an air gap or vacuum breaker located above the fixture flood level. [3280.609(b)(8)]
- Revisions to clarify manufacturer's responsibility for preparation of home to connect to external heating or combination cooling/heating appliances at the set-up site. [3280.709(e)(6)]
- Established that fuel-fired heating appliance vents for installation above the roofline may be shipped loose and installed at the site. [3280.710(b)(1)]
- Updated reference to the 1993 National Electrical Code (NEC), which included a variety of revisions for items such as disconnecting means and branch circuit protection. [Subpart I]
- Established that a GFCI is required for receptacles within 6 feet of the kitchen sink. [3280.806(b)]

Federal Register - January 14, 1994 (Effective July 13, 1994)
- Updated the wind standards, especially in areas subject to high winds. [Subpart D]
1. Changed data plate information to indicate that homes shall not be located within 1,500 feet of coastline in Wind Zones II and III unless home and its anchorage are designed for increased wind load requirements of ASCE 7-88. [3280.5]
2. Basic Wind Speed Map revised Wind Zone II (100 mph sustained winds) and established a new Wind Zone III (110 mph sustained winds). [3280.305(c)]
3. The Table of Design Wind Pressures was established to reflect revisions to the Basic Wind Speed Map. [3280.305(c)]

4. Established that design loads for Wind Zones II and III, used to determine resistance of support and anchoring systems for overturning and lateral movement, must include the simultaneous application of the horizontal drag and uplift forces. [3280.306(a)]
5. Required steel strapping for anchoring equipment to be certified by a registered professional engineer or architect, with testing procedures outlined in ASTM D3953-91. [3280.306(g)(2)]
6. Required all primary windows, including egress windows, and sliding glass doors, to resist the design exterior and interior wind pressures as specified in AAMA Standards 1701.2-1985, AAMA Standard 1702.2-1985, and AAMA Standard 1704-1985, as appropriate, except that for components and cladding Section 3280.305(c)(1) shall apply. [3280.403 and 404]
7. Established that manufacturer is required to make exterior walls ready and provide instructions for the installation of shutters, or protective covers, or provide those shutters or covers, to protect windows and doors in high wind areas. [3280.403, 404 and 405]

New Regulations and Effective Date by Citation to CFR

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§3280.4 Incorporation by reference.

(a) The specifications, standards and codes of the following organizations are incorporated by reference in 24 CFR part 3280 ..... (not reprinted due to length .....[47 FR 49385, Nov. 1, 1982, as amended at 52 FR 47553, Dec. 15, 1987; 58 FR 55002, Oct. 25, 1993; 59 FR 15113, Mar, 31, 1994]

§3280.5 Data plate.

Each manufactured home shall bear a data plate affixed in a

permanent manner near ..... (not reprinted due to size) .....

[59 FR 2469, Jan. 14, 1994]

§3280.208 Smoke alarm requirements.

a) Labeling. Each smoke alarm required under paragraph (b) of this section must conform with the requirements of UL 217, Single and Multiple Station Smoke Alarms, dated January 4, 1999 (incorporated by reference, see §3280.4), or UL 268, Smoke Detectors for Fire Protective Signaling Systems, dated January 4, 1999 (incorporated by reference, see §3280.4), and must bear a label to evidence conformance. ..... (not reprinted due to size) .....

[67 FR 12817, Mar. 19, 2002, as amended at 67 FR 49795, July 31, 2002]

§3280.305 Structural design requirements.

(a) General. Each manufactured home shall be designed and constructed as a completely integrated structure capable of sustaining the design load requirements of this standard, and shall be capable of transmitting these loads to stabilizing devices without exceeding the allowable stresses or deflections. .....(not reprinted due to size).....

[40 FR 58752, Dec. 18, 1975. Redesignated at 44 FR 20679, Apr. 6, 1979, as amended at 44 FR 66195, Nov. 19, 1979; 52 FR 4582, Feb. 12, 1987; 58 FR 55006, Oct. 25, 1993; 59 FR 2469, Jan. 14, 1994; 59 FR 15113, 15114, Mar. 31, 1994; 62 FR 54547, Oct. 20, 1997]

24 CFR § 3282.11 Preemption and reciprocity.

(a) No State manufactured home standard regarding manufactured home construction and safety which covers aspects of the manufactured home governed by the Federal standards shall be established or continue in effect with respect to manufactured homes subject to the Federal standards and these regulations unless it is identical to the Federal standards.

(b) No State may require, as a condition of entry into or sale in the State, a manufactured home certified (by the application of the label required by § 3282.362(c)(2)(i)) as in conformance with the Federal standards to be subject to State inspection to determine compliance with any standard covering any aspect of the manufactured home covered by the Federal standards. Nor may any State require that a State label be placed on the manufactured home certifying conformance to the Federal standard or an identical standard. Certain actions that States are permitted to take are set out in § 3282.303.

(c) States may participate in the enforcement of the Federal standards enforcement program under these regulations either as SAAs or PIAs or both. These regulations establish the exclusive system for enforcement of the Federal standards. No State may establish or keep in effect through a building code enforcement system or otherwise, procedures or requirements which constitute systems for enforcement of the Federal standards or of identical State standards which are outside the system established in these regulations or which go beyond this system to require remedial actions which are not required by the Act and these regulations. A State may establish or continue in force consumer protections, such as warranty or

warranty performance requirements, which respond to individual consumer complaints and so do not constitute systems of enforcement of the Federal standards, regardless of whether the State qualifies as an SAA or PIA.

(d) No State or locality may establish or enforce any rule or regulation or take any action that stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. The test of whether a State rule or action is valid or must give way is whether the State rule can be enforced or the action taken without impairing the Federal superintendence of the manufactured home industry as established by the Act.

[42 FR 2580, Jan. 12, 1977; 56 FR 65186, Dec. 16, 1991; 61 FR 10859, March 15, 1996]

RULES and REGULATIONS

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3282

[Docket No. FR-4192-N-01]

Manufactured Housing Construction and Safety Standards: Notice of Internal

Guidance on Preemption

Thursday, January 23, 1997

AGENCY: Office of the Assistant Secretary for Housing--Federal Housing Commissioner, HUD.

ACTION: Notice of staff guidance.

SUMMARY: The Office of Consumer and Regulatory Affairs in HUD has developed guidelines to assist its staff in addressing preemption issues concerning the National Manufactured Housing Construction and Safety Standards Act of 1974. Because of the interest of outside persons in the subject generally, HUD has decided to publish these internal guidelines to assist regulated entities and consumers in understanding the guidelines under which HUD will be operating. These guidelines are not binding on either HUD or the public and are published for informational purposes only.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, Office of Consumer and Regulatory

Affairs, Department of Housing and Urban Development, Room 9156, 451 Seventh Street, SW., Washington, DC 20410-0500; telephone (202) 708-6401, or on e-mail through Internet at David_R._Williamson@hud.gov. For hearing and speech-impaired persons, the telephone number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1-800- 877-8339. (Other than the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The staff guidelines reproduced in this notice are internal guidance to assist the HUD office administering the manufactured housing program in answering questions from the public as to whether particular State or local laws or regulations are preempted by the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401-5426) (the Act). The guidelines are based upon the Act and its implementing regulations in 24 CFR parts 3280, 3282, and 3800 and do not provide new interpretations of the Act *3457 or create new HUD policy. The guidelines were developed to assist HUD staff in giving uniform and timely responses to the public, including consumers and affected industries, and State and local governments on preemption issues.

HUD is publishing these guidelines because of the interest in preemption questions that has been expressed by members of these groups. HUD welcomes comments on these guidelines. Anyone wishing to comment on these guidelines may do so by submitting written comments to the attention of the person listed in the "For Further Information Contact" section of this notice.

The internal guidelines that were prepared are as follows:

Guidelines for Analyzing Situations Involving Preemption Under the Manufactured Home Construction and Safety Standards Act

I. Introduction

These guidelines have been prepared to assist in answering questions from the public as to whether particular State or local laws or regulations are preempted by the Act. These guidelines are based upon the National Manufactured Housing Construction and Safety Standards Act and its implementing regulations and are not intended to add new interpretations to the Act or to create new HUD policy.

II. Statutory And Regulatory Background

The Act establishes a national set of construction standards for manufactured housing. To ensure that State or local governments did not enact or allow to continue conflicting construction standards, Congress provided that no State or local government could establish a standard dealing with an aspect of performance that is not identical to those standards established under the Act (section 604(d)). However, where there is no Federal standard, the States are free to act (section 623(a)).

HUD has interpreted these statutory provisions in its regulations implementing the Act (24 CFR 3282.11). In accordance with the Act, the regulation bars States from imposing a manufactured home standard regarding construction and safety that covers the same aspects of performance governed by a Federal standard. More generally, States may not take any action that could interfere with the Federal superintendence of the industry as established by the Act (24 CFR 3282.11).

The Act does not impose a duty on HUD to make any determinations as to the applicability of the preemption provision, to investigate preemption issues, or to render advisory opinions regarding preemption questions. Further, a State is not specifically prohibited under section 610 of the Act from implementing a provision that is preempted, nor is there any requirement under the Act for the Secretary to

enforce the preemption provision. Generally, enforcement of preemption requirements is left up to the Courts. Where an issue is unclear, it is appropriate for the Courts to decide whether a State or local requirement is preempted.

To the extent possible, HUD wishes to be responsive to inquiries of consumers, the industry, and State or local governments on the applicability of preemption. These responses should be considered as an effort by HUD to advise the public of its construction of the statute and the rules which it administers, and to give its opinion as to the applicable law and the particular facts.

III. Guidelines for Specific Situations

Most inquiries can be responded to merely by discerning if there is a specific Federal standard which addresses the same aspect of performance as the State standard. If so, the Federal law preempts the State law. In a significant number of cases, however, the determination is not as clear and requires either an engineering or legal analysis, or both. There are four general areas of inquiry which are frequently raised:

A. Installation

There is no specific Federal standard that deals with the installation of manufactured homes. As such, standards as to the installation of manufactured homes can be regulated by local or State governments and are not preempted under the Act.

It is possible, however, that a local installation rule may hinder the implementation of Federal standards. For example, the implementation of a local rule may conflict with a requirement of a Federal construction standard for plumbing or water hookup. In such cases, the local rule is preempted.

B. Zoning

Normally, zoning issues fall outside the scope of the preemption provisions of sections 604 of the Act. There may be limited instances, however, in which the Federal definition of "manufactured home" could fall within the broad definitions applied to prefabricated or factory built homes under the local zoning ordinance. Such homes are treated differently depending on the building code under which they are constructed.

Generally, the enforcement of a local ordinance regulating the location of manufactured homes has not been subjected to the regulatory authority of the Act because such enforcement rests on the locality's right to determine proper land use. In addition, a locality is free to adopt and enforce ordinances that regulate the appearance and dimensions of homes so long as the criteria established by such ordinances do not have the effect of excluding manufactured homes based on the construction and safety standards to which they were built. Such regulation of aesthetics protects property values, preserves the character and integrity of communities and neighborhoods, and assures architectural compatibility.

If a locality, however, is attempting to regulate, and even exclude, certain manufactured homes through zoning enforcement that is based solely on a construction and safety code different from that prescribed by the Act, the locality lacks such authority. Thus, a locality cannot accept structures meeting the Federal definition of manufactured homes which comply with different standards, such as the local or State Building Code, and exclude or restrict manufactured homes that are aesthetically the same but only meet the Federal standards. By excluding or restricting only manufactured homes built to the Federal standards, and accepting manufactured homes built to other codes, the locality is establishing standards different than the Federal standards.

A locality is not in conflict with the preemptive provisions of the Act if, without regard to construction standards, it treats all structures that meet the Federal definition of Manufactured Homes the same under local zoning laws.

C. State Enforcement

A number of questions have arisen as to when a State's enforcement of manufactured housing standards are preempted by Federal law. HUD's regulations at 24 CFR 3282.11 (c) and (d) set forth a clear standard as to the appropriateness of State enforcement of its manufactured home standards. The Federal regulations prohibit a State from establishing a code enforcement system for manufactured homes which is outside, or goes beyond, those enforcement procedures specifically set forth in the Federal regulations. "The test of whether a State rule or action is *3458 valid or must give way is whether the State rule can be enforced, or the action taken, without impairing the Federal superintendence of the manufactured home industry as established by the Act" (24 CFR 3282.11(d)). There are several specific situations:

1. A State, as a State Administrative Agency (SAA) under section 623 of the Act, can enforce the Federal standards. It may also enforce State standards which are identical to the Federal standards. Such actions would not be preempted. However, the State's system of enforcing these standards must be identical to the enforcement procedures in the Federal regulations. "No State may establish * * * procedures or requirements * * * which * * * require remedial actions which are not required by the Act and the regulations" (24 CFR 3282.11(c)).

2. A State may enforce its own consumer protection or warranty laws as to defects in individual homes. As such, a State may require a manufacturer to correct non-compliances and defects in response to individual consumer complaints.

Such acts would not be preempted by Federal law (24 CFR 3282.11(d)).

3. Notwithstanding the above, however, there are limitations on a State's actions to correct individual homes. These are situations in which State action would interfere with Federal superintendence of the manufactured home industry.

(a) Imminent safety hazards or serious defects. Where it appears that there is an imminent safety hazard or a serious defect, the State is required to refer the matter to HUD for enforcement (24 CFR 3282.405(b) and 3282.407(a)).

(b) Class of manufactured homes. Where it appears that the same defect exists in a class of manufactured homes and the State is not the State in which the homes were produced, then the State is required to refer the matter to the SAA in the State in which the homes were produced or to HUD (if there is no SAA in the State of production) for enforcement. Further, if a class of defective homes is produced in more than one state, HUD is responsible for the enforcement actions. If the homes were all manufactured in the State, the State may take actions, consistent with the Federal regulations, with regard to the noncompliance and defects (24 CFR 3282.405(b) and 3282.407(a)(3)).

(c) Prior HUD enforcement. Where HUD has already taken action to have a class of serious defects corrected, then the State is preempted from taking corrective actions of its own pursuant to the Act (24 CFR 3282.404(e)).

D. Utility Companies

There have been a few utility companies which have attempted to impose their own construction or safety standards on manufactured homes as a requirement for connection to their services. The Act, by its express terms, prohibits only "State or political subdivisions of a State"

from establishing standards that conflict with the Federal standards (section 604(d)). Accordingly, if the utility company is owned or controlled by a political subdivision, its standards are preempted by the Federal standards. If the utility is privately owned, its standards would not be preempted.

E. State Construction and Safety Standards

1. Aspects of performance. Additional questions arise in situations in which the State or locality attempts to apply its own building or safety code to the manufactured home. Under section 604 of the Act, State law is preempted whenever there is a State performance standard regarding construction and safety that is not identical to an established Federal standard. On the other hand, section 623 of the Act provides that Federal law does not preempt State construction or safety standards for which a Federal standard had not been established. Thus, for there to be Federal preemption, there must be a specific aspect of a Federal performance standard which duplicates a local standard.

Federal preemption cannot be based upon a general purpose of the Act, or the need for national uniformity in the manufactured housing industry. The courts have applied this "aspect of performance" standard in analogous situations by focusing not on the purpose or scope of the Act, but, rather, on the specific requirements of an established Federal standard. If the Federal standard is encompassed or impacted by the State requirement, the State law is preempted.

2. Superintendence. It is also possible that a State or local law may be preempted even though the local rule does not meet the differing aspect of performance standard. As stated above, 24 CFR 3282.11(d) sets forth an additional standard of preemption. A State rule must give way if it impairs the Federal superintendence of the manufactured home industry

as established by the Act.

Thus, for example, a local requirement that all homes be constructed on site, while not covering any aspect of performance, would be so fundamentally in conflict with the Federal standards as to impair the Federal superintendence of the manufactured home program. Such a requirement would be preempted under the HUD regulations.

The scope of this regulatory provision is limited by the language "as established by the Act". This language limits the Federal superintendence of the industry, since section 604(d) of the Act limits the preemption of standards to only those issues dealing with the same aspects of performance.

Authority: 42 U.S.C. 3535(d) and 5401 et seq.

Dated: January 14, 1997.

Stephanie A. Smith,

General Deputy, Assistant Secretary for Housing-Federal Housing Commissioner.

2

No. 05-641

IN THE
SUPREME COURT OF THE UNITED STATES

Arthur Allen and Donald Bailey,

Petitioners

-vs-

Bunker Hill Township,

Respondent

On Petition for Writ of Certiorari to
the Michigan Court of Appeals

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Is the Bunker Hill Township Zoning Ordinance requirement, that any manufactured home newly sited on a parcel of land within the Township must meet current HUD construction and safety standards, consistent with the Federal statutory mandate of 42 U.S.C. §5403 (d) and the Federal regulatory mandate of 24 C.F.R. §3283.11(a), both of which preclude state political subdivisions from continuing in effect any construction and safety standard that is not identical to the Federal standard?

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STATUTES, ORDINANCES & REGULATIONS INVOLVED

In addition to 42 U.S.C. § 5403 (d), "Supremacy of Federal standards" and 24 C.F.R. § 3282.11 (a) & (d) , "Preemption and reciprocity", cited by Petitioner, § 11.13 of the Bunker Hill Township Zoning Ordinance, adopted effective September 25, 1981, is the pertinent provision and was included, in total, as Stipulated Exhibit #2 in the Trial Court. Section 11.13 of the Ordinance provides as follows:

> "Section 11.13 DESIGN AND CONSTRUCTION STANDARDS FOR ALL STRUCTURES AND BUILDINGS USED AS SINGLE-FAMILY DWELLINGS.
>
> All single-family dwelling units, including mobile and modular homes, to be constructed or located in Bunker Hill township shall conform to all standards listed below. These standards shall apply to all one-family living units built or brought into the Township, those whose location is changed within the Township or on a lot, and those dwellings, moblie [sic] homes, or modular homes which replace an existing mobile home, modular home or dwelling. Standards stated below do not apply to mobile homes located in a mobile home park licensed by the Michigan Mobile Home Commission.
>
> A. Dwelling unit floor area shall conform to standards set forth in Schedules A and B of this Ordinance.
> B. The minimum exterior side to side or end to end distance shall be 14 feet.

C. Foundations shall be installed at minimum frost depth or greater and include a continuous concrete footing and wall under the frame of the living unit. In lieu of the foregoing, 16 inch diameter concrete piers at frost depth and centered not more than 8 feet under the frame may be installed.

D. Wheels, under carriage or towing equipment associated with the living unit shall not be exposed to view. Screening material used to block view shall be non-combustable [sic] and similar in appearance texture and color to the exterior walls of the living units. Straw bales or plywood screening is prohibited.

E. All dwelling units shall have interior storage areas, excluding automobile storage area, of not less than 15% of the gross floor area of the dwelling unit. Said storage may be within the dwelling unit or in a detached structure with permanent foundation and concrete floor, if situated in the same lot or parcel as the dwelling unit it serves.

F. Exterior structural and design features of all dwelling units shall be compatible with other dwelling units in the vicinity, especially dwelling units on nearby lots. Minimum structural features shall include attached stable steps at all exterior entry doors, roof and foundation drainage features designed to concentrate storm water and channel it away from the dwelling unit.

G. All attached additions to dwelling units shall comply with the applicable construction code in effect where an existing dwelling unit does not meet the applicable construction code and this Ordinance, an enlargement or addition to floor area shall not be permitted, unless the existing dwelling unit is brought to code and/or this Ordinance

H. All dwelling units shall meet the minimum construction and safety standards of the Michigan Mobile Home Commission, the Michigan State Construction Code, the Department of Housing and Urban Development, or the Farmers Home Administration, whichever may be applicable."

Bunker Hill Township Zoning Ordinance, adopted effective September 25, 1981

COUNTER-STATEMENT OF THE CASE

In 1982, Bunker Hill Township adopted what remains its current Zoning Ordinance. The relevant Section therein is § 11.13 as set forth previously herein, which, in total, sets forth numerous requirements applicable to single-family dwellings located throughout the Township whether those dwellings are mobile homes, modular homes or site-built homes.

As used in the Ordinance, the term "mobile home" includes a "manufactured home" constructed pursuant to the National Manufacturing Construction and Safety Standards Act of 1974; 42 U.S.C. §5401, *et. seq.* Subsections (a) through (h) of § 11.13 of the Bunker Hill Township Zoning Ordinance set forth various criteria and requirements equally applicable to site-built homes, manufactured homes and modular homes. The Ordinance contains the same 14-foot minimum width (set forth in subsection [b]); the same foundation requirements (set forth in subsection [c]); the same screening and blocking requirements (set forth in subsection [d]); the same storage areas (set forth in subsection [e]); the same structural and design compatibility requirements, roof foundation and drainage requirements (as set forth in subsection [f]); and, the same requirements for

attached additions (as set forth in subsection [g]) for all homes newly placed on a parcel within the Township.

In addition, for homes newly placed on a parcel, applicable current construction standards must be met pursuant to subsection (h) of the Ordinance which, for the 1984 Schult mobile home in question, are the Construction and Safety Standards of the Department of Housing and Urban Development [HUD].

In 1999, the Bunker Hill Township Board of Trustees adopted a Resolution [Petitioners' Appendix, page a-18] [1] which summarized in one location all of the various Bunker Hill Township requirements related to manufactured/mobile homes. To demonstrate compliance with the requirements of the Bunker Hill Township Zoning Ordinance [hereinafter "Zoning Ordinance"] that a mobile home newly sited on a parcel of land within the Township met current HUD standards, the Township would accept (but did not require) an inspection verification, as to those older mobile homes originally constructed to standards that were not current HUD construction and safety standards (i.e., "current" at the time the mobile homes was being newly placed).

As the Trial Court stated in its Opinion and Order dated March 8, 2002 [App, p a-41]

> "Whether we are dealing with stick-built homes, modular homes, or mobile homes, the Court agrees

---

1. References to Petitioners' Appendix hereinafter annotated as "App, p____"

with Plaintiff that if such single-family dwelling units are, *inter alia*, relocated within the Township, they must all meet applicable current construction and safety standards."

The Court correctly stated that, for homes newly placed on a parcel, the Township permits these Petitioners (Defendants) to utilize any method to bring their mobile home into compliance with current HUD standards. [App, pp 43-44 - paraphrased] The Court further specifically stated:

> "In one respect, the Court agrees with Defendants that their mobiles home previously complied with the HUD standards. Had the mobile home remained on its original parcel of land, Plaintiff clearly would not have had cause to argue non-compliance with the ordinance." [Emphasis Supplied]
>
> Court's Opinion and Order, 3/8/02
> [App, p a-44]

That was, and is, Bunker Hill Township's application of its own Zoning Ordinance.

As set forth in Stipulated Exhibit #7-a , the Township Supervisor stated as follows:

> "6-13-00
>
> Don,
>
> Please find attached Info. & Bunker Hill Regulations on mobile Homes you requested.
>
> The latest Requirement by HUD was in 1994, but there may be several additions to the HUD Requirements since your mobil [sic] home was built.

What the Twp. Regulation says is if HUD will inspect & give written verification of ok to the twp. That's sufficient. If they will not inspect or give verification then the twp cannot issue a building permit.

Thanks
SEd. Roark
twp supervisor"

[App, p a-28]

Subsequent correspondence included a letter from counsel for the Township, dated July 7, 2000, [Stipulated Exhibit #7-c] which stated, in part:

". . .It is my understanding, from your letter and my discussion with Mr. Roark, that there is a mobile home that was, when installed, on Hanes Road in compliance with all Township Ordinances. Thus, that mobile home could stay on its current parcel. However, for any mobile home to be installed on a new parcel in Bunker Hill Township, the Township Ordinance clearly requires compliance to current HUD standards.

****

The Township is not in the business of inspecting mobile homes. If a mobile home is unable to obtain current HUD certifications, then it may not be placed on a new parcel on Harmon Road. It is not, however, precluded from continuing at its current location."

[App, p a-30]

Petitioners had communicated with the U.S. Department of Housing and Urban Development and received a response dated July 28, 2000, [Stipulated Exhibit #7-d - App pp a-31-32] which provided, in part:

"...We are also not aware of any Federal law or regulation which provides for the inspection of used manufactured homes for placement in a new location or after the sale of the unit. In these cases, manufactured homes generally fall under the jurisdiction of State and local authorities." [Emphasis Supplied]

[App, p a-32]

Petitioners' 1984 Schult mobile home was manufactured in compliance with HUD standards which existed in 1984. The parties stipulated to the fact that that mobile home does not meet the current minimum construction and safety light and ventilation standards set forth at 42 C.F.R. § 3280.103, the current minimum construction safety attic and roof ventilation standards set forth at 42 C.F.R. § 3280.504 (c), and the current minimum construction and safety heat and loss gain coefficient of heat transmission standards (the insulation requirement) set forth at 42 C.F.R. §3280.506, adopted October 25, 1994, when Petitioners placed the mobile home on a new parcel in September, 2000. [Stipulated Fact #12; App, pp a-13-14]

Petitioners did not have Township approval to relocate the 1984 Schult on a new parcel of land within the Township because the 1984 mobile home did not meet current HUD construction and safety standards. They moved it in defiance of the Township requirements. The Township commenced its lawsuit.

While the case has had an extended and varied procedural history, as to the issue of preemption, the parties concurred from the beginning that the applicable statutory section is 42 U.S.C.§ 5403 (d) . Stipulated Fact #3 states:

"3. With regard to any regulations it elects to adopted [sic], Bunker Hill Township is required, by Federal statute and regulation, to adopt, and continue in effect, only standards for mobile homes that are identical to the Federal standards set forth at 42 U.S.C.A. § 5403 (d) and 24 C.F.R. § 3282.11, which provide as follows:

> 'Whenever a Federal Manufactured Home Construction and Safety Standard established under this chapter is in effect, no state or political subdivision of a state shall have any authority either to establish, or to continue in effect, with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal Manufactured Home Construction and Safety Standard. 42 U.S.C.A. § 5403 (d)'.
>
> (a) No state manufactured home standard regarding manufactured home construction and safety which covers aspects of the manufactured home governed by the federal standards shall be established or continue in effect with respect to manufactured homes subject to the Federal standards and these regulations unless it is identical to the federal standards.
>
> (d) No State or locality may establish or enforce any rule or regulation or take any action that stands as an obstacle to the accomplishment and execution of the full purpose and objectives of

> Congress. The test of whether a State rule or action is valid or must give way is whether the State rule can be enforced or the action taken without impairing the Federal superintendence of the manufactured home industry as established by the Act. 24 C.F.R. § 3282.11 (a) & (d)."
>
> Stipulated Facts and Record; App, pp a-10-11

In that, the parties are in agreement.

Bunker Hill Township has always argued, among other things, that Petitioners are substantively requiring the Township – or asking the Courts to require the Township - to violate that requirement of law and to continue in effect a standard no longer in effect for homes newly placed on a parcel of land.

Petitioners have always argued, among other things, that the Federal preemption set forth in that statutory section mandated Bunker Hill Township to accept the 1984 Schult mobile home newly placed on a parcel of land because it had, at one time (i.e., in 1984) met HUD standards.

In addition to Petitioners' detailed, procedural summary, the Trial Court heard additional testimony on April 28,2003, prior to determining whether the mobile home should be moved from its new location.

At the time Petitioners moved the mobile home in September, 2000, to a new parcel in Bunker Hill Township without Township permission, the Bunker Hill Township Zoning Ordinance had been in place since 1981, the

summary Resolution had been in place since 1999, the applicable Federal statute and the applicable Federal Regulations had been in place for years; the specific HUD construction and safety standards had been in place since 1994 and were not met by the 1984 Schult mobile home. At no time during these proceedings has there been a change in Ordinance, Regulation or Statute relevant to the issues presented and argued here.

ARGUMENT
AND
REASONS FOR DENIAL OF PETITION

SUMMARY OF ARGUMENT

This case involved the limited testimony of the Bunker Hill Township Supervisor, Mr. Ed Roark, and the Petitioner, Arthur Allen, on April 28,2003; the Deposition testimony of Kevin G. DeGroat, a regulatory specialist with the Michigan Manufactured Housing and Land Development Division on May 2, 2001; and, Stipulated Facts and Stipulated Exhibits. The parties agreed upon the relevant section of the Bunker Hill Township Zoning Ordinance, the Bunker Hill Township Resolution of 1999, and the applicability of the relevant sections of both the National Manufacturing Construction Safety Standards Act of 1974, and the regulations promulgated thereunder.

The parties agree that: (a) the Bunker Hill Township Zoning Ordinance was enacted in 1981; (b) that the mobile home in question was constructed in 1984, which then met the then-current HUD standards; (c) that the Township adopted a Resolution summarizing its requirements in 1999; (d) that the 1984 Schult mobile home was lawfully placed

within the Township; (e) that, in 2000, the 1984 Schult mobile home did not meet various current HUD standards, including, specifically, HUD standards for minimum construction and safety light and ventilation, minimum construction and safety attic and roof ventilation and minimum construction and safety heat and loss gain coefficient of heat transmission standards; (f) that the Schult mobile home lawfully occupied the original parcel on which it was sited; (g) that, in 2000, the Township refused to permit the mobile home to be moved to a new location within the Township because it did not then meet the current HUD construction and safety standards; and (h) that the Petitioners moved it anyway, in spite of the fact that it did not meet current HUD standards.

Bunker Hill Township perceives that Petitioners have improperly applied and misstated the law to the facts in this case.

Bunker Hill Township's argument is that the carefully crafted preemption language adopted by Congress, as set forth at 42 U.S.C. § 5403 (d) requires Bunker Hill Township, over time, to apply current HUD standards. If it fails to do so, it would violate Federal law. Petitioners' argument is that the Bunker Hill Township Zoning Ordinance – as applied by Bunker Hill Township to require homes newly sited on a parcel of land to be in compliance with then-current HUD standards – is preempted by that same statutory language and that the Michigan Courts are incorrect in their application of that statute. Bunker Hill Township argues that the Michigan Court correctly applied the statute (and regulation) and properly stated the rule of law. There is no conflict with reported Opinions on the subject by the United States Courts of Appeals or other courts.

While Petitioners have always argued that the Township's application of current HUD standards for a home newly moved onto a parcel was improper because the 1984 Schult mobile home met the 1984 HUD standards, that argument was always set forth as a "preemption" argument and not argued separately as improper because it was a "retrospective" application of law. However, the change in HUD construction and safety standards over time has always been a part of each party's arguments concerning the application of the preemption language adopted by Congress and contained at of 42 U.S.C. §5403 (d). There is not here an inapplicable retroactive application of law. The cases of this court cited by Petitioners are not applicable in the manner applied by Petitioners. Finally, no important Federal question exists here, nor does this unreported Opinion from the Michigan Court of Appeals conflict with any decision of the Federal Courts of Appeals.

MICHIGAN COURTS PROPERLY UNDERSTOOD AND APPLIED THE FEDERAL ACT TO THE BUNKER HILL TOWNSHIP ZONING ORDINANCE AND FOUND THAT THE ORDINANCE COMPLIED WITH FEDERAL PREEMPTION REQUIREMENTS.

The Respondent perceives that the Petitioners, in their opening argument heading, misstated the Michigan Court's application of the law to the facts in this case when Petitioners stated:

> "The Michigan Court has decided that local units can enforce Federal regulations of manufactured homes and are not preempted by the Federal act, in conflict with decisions of the United States Courts of Appeals."

The Trial Court Opinion and Order and the Court of Appeals' Opinion and Order [App, pp a-1 and a-51 & a-60] make it clear that Michigan Courts understood the supremacy of the HUD standards required by 42 U.S.C. §5403 (d). Their conclusion was that Bunker Hill Township's Zoning Ordinance was complying therewith and not in violation thereof.

Petitioners continually ignore the actual language contained within 42 U.S.C. 5403 (d) which prohibits Bunker Hill Township from "continuing in effect" standards not identical to the HUD construction and safety standard.

Even Petitioners' expert from the State of Michigan, Kevin DeGroat, concurred that continuing in effect an old standard would be inconsistent with the Federal statute, specifically stating on pages 59 and 60 of his Deposition:

"Q. No. Once the federal government changes the standards from 1993 to 1994, and if the local government continued in effect in 1994 the 1993 standards, would the local unit of government, in your opinion, be violating that language because it is continuing in effect a standard no longer adopted?

A. I don't know with respect to violation. There would certainly be an inconsistency. But I don't know what effect that would have from federal enforcement purposes of determining a violation. They would certainly be out of date.

Q. But would they not in effect be continuing in

effect any standard that is then not identical to the federal manufactured standard?

A. If they were to continue to enforce an older standard?

Q. Yes, sir.

A. Yeah, that would be inconsistent, the way I would view it, with that provision."

Deposition, Kevin DeGroat, 5/22/01, pp 59,60

Petitioners' expert's interpretation of the Federal statute is consistent with the normal interpretation of the words chosen by Congress.

WEBSTER's THIRD NEW INTERNATIONAL DICTIONARY, defines "continue" as:

> ". . .1a: to be steadfast or constant in a course or activity: keep up or maintain esp. without interruption a particular condition, course, or series of actions: persevere, endure, persist."
>
> **Id**, p 493

The same dictionary defines the word "in effect", as a subcomponent of its definition of "effect":

> ". . .in substance: virtually"
>
> **Id**, p 724

Similarly, the AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, FOURTH ED., defines "continue" as:

> ". . .1. To go on with a particular action or in a particular condition; persist."
>
> **Id**, p 398

and defines "effect" as:

> ". . .1. Something brought about by a cause or agent; a result . . . 5. The condition of being in full force or execution: a new regulation that goes into effect tomorrow."
>
> **Id**, p 57

If Bunker Hill Township, in the year 2000, permits a manufactured home – which does not meet current HUD construction and safety standards – to be newly placed on a parcel, the Township would be "continuing in effect" a standard not identical to HUD construction and safety standards.

The Trial Court Opinion and the unreported Michigan Court of Appeals' Opinion affirming the Trial Court are consistent with Federal reported cases on the preemption requirements of 42 U.S.C. §5403 (d).

Specifically, *Scurlock v. City of Lynn Haven,* 858 F. 2d 1521, 1525 (11th Cir. 1988) states:

> "Since the City ordinance has greater safety requirements for a mobile home than the Federal Act, the ordinance must give way to the Act."
>
> **Id**, p 1525

Here, the opposite is true. The Township has no independent safety requirements of its own; it requires compliance with the current, published Federal requirements. Or, as stated by the District Court in *Burton v. City of Alexander*, 2001 WL 527415, *7 (M.D. Ala):

> "A municipality must have mandated some definite

standards that differs from a HUD standard."

Id, p 6

Bunker Hill Township has not mandated any standard that differs from HUD standards. With respect to aesthetic standards (which are not preempted), *Burton,* supra, also stated in Footnote 22:

> "A state or municipality acts illegally only when it singles out manufactured homes for disparate treatment."
>
> **Id,** p 7

Bunker Hill Township's application of its Zoning Ordinance to the facts in this case is in accord with *Schurlock*, supra., and *Burton*, supra.

Bunker Hill Township has no quarrel with and believes *Lauderbaugh v. Hopewell Township*, 319 F. 3d 568 (3rd Cir. Pa. 2003) is not supportive of Petitioners and is supportive of the Michigan Court of Appeals' and Trial Court's Opinions here. As stated therein with respect to the National Manufactured Housing Construction and Safety Standards Act [NMHCSSA]:

> ". . .they [localities] may not use safety and construction standards that conflict with the NMHCSSA as a regulatory tool."
>
> **Id,** p 576

That is a clear statement of the law. The Michigan Courts correctly understood it. The Michigan Courts correctly applied it.

In *Georgia Manufactured Housing Association, Inc. v. Spalding County,Georgia et.al.*, 148 F. 3d 1304 (Ca. 11 1998) that Court determined that a 4:12 roof slope requirement was not a construction and safety standards but an aesthetic condition for placement of manufactured homes in residential districts. (p 1310)

While, in fact, Bunker Hill Township is applying the Federal construction and safety standards as mandated, the totality of §11.13 of its Zoning Ordinance makes it clear that requiring current construction standards for all single-family dwellings, newly placed on a parcel of land is also an aesthetic standard and, as such, is not in violation of preemption standards. In doing so, however, it is complying with Federal preemption law.

Texas Manufactured Housing Association, Inc. v. City of Nederland, 101 F 3d 1094 (Ca. 5 1996) *cert den* 521 U. S. 1112; 117 S. Ct. 2498; 138 L. Ed. 2d 1003 (1997) is equally supportive of Bunker Hill Township. As that Court stated:

> "Ordinance 259, in contrast, regulates the placement and permitting of trailer coaches for the purpose of protecting property values and does not expressly link its provisions in any way to local safety and construction standards."
>
> **Id,** p 1100

In requiring all newly-sited homes on parcels of land to meet current construction standards – which, for manufactured homes, are HUD standards – not only is Bunker Hill Township complying with Federal law, it is assuring compatibility of aesthetics, Township-wide, by its requirements set forth in § 11.13 in total.

The Michigan Court has read *CMH Manufacturing, Inc. v. Atawba County, et. al.*, 994 F. Supp. 697 (W.D. N.C. 1998) correctly. As the Court stated in that case:

> "However, the parties have directed the court to no case finding preemption of a regulation not impacting safety standards in some direct way."
>
> **Id,** p 706

Bunker Hill Township is not "impacting safety standards in some direct way". It is simply requiring compliance with those Federal standards. It has not adopted its own construction and safety regulations.

In *Michigan Canners and Freezers Association, Inc., et. al. v. Agricultural Marketing and Bargaining Board, et. al.*, 467 U.S. 461, 469; 104 S. Ct. 2518; 81 L. Ed. 2d 399 (1984), this Court summarized the three ways Federal law may preempt state law as follows:

> ". . .Congress may explicitly define the extent to which it intends to pre-empt state law.
>
> ****
>
> . . .Congress may indicate an intent to occupy an entire field of regulation, in which case the States must leave all regulatory activity in that area to the Federal Government.
>
> ****
>
> . . .Finally, if Congress has not displaced state regulation entirely, it may nonetheless pre-empt state law to the extent that the state law actually conflicts with federal law. Such a conflict arises when compliance with both state and federal law is impossible, (citations omitted) or when the state law 'stands as an obstacle to the accomplishment and

execution of the full purposes and objectives of Congress.' "

Id, p 470

This Court found preempted a Michigan statute going well beyond the Federal regulatory scheme. As stated therein:

> "The Michigan Act, however, empowers producers' associations to do precisely what the federal Act forbids them to do. . . . In practical effect, therefore, the Michigan Act imposes on the producer the same incidents of association membership with which Congress was concerned in enacting §2303 (a).
>
> *****
>
> ... it stands as an obstacle to the – accomplishment and execution of the purposes and objectives of 'Congress'."
>
> **Id,** pp 477-478

To the extent this form of preemption is even remotely arguably applicable (standing as an obstacle), given the clear, specific language of 42 U.S.C. § 5403 (d), the Bunker Hill Township Zoning Ordinance does not stand as an obstacle to the Federal Act; it was carefully drafted to comply with the precise preemption language chosen by Congress.

Similarly, *Hillsborough County Florida, et. al. v, Automated Medical Laboratories, Inc.*, 471 U.S. 707; 105 S. Ct. 2371; 85 L. Ed. 2d 714 (1985) deals with conflict preemption and is not here applicable other than in relation to the argument set forth as to the *Michigan Canners* case, supra.

Capital Cities Cable, Inc. et. al. v. Crisp, 467 U.S. 691; 104 S.Ct. 2694; 81 L. Ed. 2d 580 (1984); *Fidelity Federal Savings and Loan Association, et. al. v. Reginald D. de la Cuesta, et. al.*, 458 U.S. 141; 102 S. Ct. 3014; 73 L. Ed. 2d 664 (1982); *United States v Shimer*, 367 U. S. 381; 81 S. Ct. 1554; 6 L. Ed. 2d (1961); *City of Burbank v. Lockheed Air Terminal, Inc.* 411 U. S. 624; 93 S. Ct. 1854; 36 L. Ed. 2d 547 (1973) and *United States v Gary Locke, et. al.*, 529 U. S. 89; 120 S. Ct. 1135; 146 L. Ed. 2d 69 (2000) are all inapplicable under conflict preemption for the reasons previously presented. Petitioners simply want to ignore the unambiguous language chosen by Congress.

Bunker Hill Township – in the language used in its Zoning Ordinance and in its application – is complying with the statutory mandate of 42 U.S.C. § 5403 (d). The Michigan Trial Court and the Michigan Court of Appeals in its unreported Opinion understood the applicability of that statutory section and correctly applied it to the facts in this case. 42 U.S.C. §5403 (d) permits and mandates local units of government to have standards identical to the Federal standards for construction and safety which, themselves, change over time. Bunker Hill Township does just that. It is statutorily required to have standards identical to the Federal standards – or perhaps more precisely stated, it is proper for Bunker Hill Township to apply the current Federal construction and safety standards for newly-sited, manufactured homes. It is not preempted from doing so; it is mandated to do so.

Finally, in *Michigan Manufactured Housing Association, et. al. v. Robinson Township*, 73 F. Supp. 2d 823 (W.C. Mich. 1999) , the Federal District Court was examining a provision of the Township Ordinance that stated:

"However, all dwellings, including mobile homes, must meet the roof snow load and strength requirements applicable to site built structures."

Id, p 824

The Federal Court correctly noted in that case that under 24 C.F.R. § 3282.11(d):

"Thus, states and municipalities are precluded 'from imposing construction and safety standards upon mobile homes that differ in any respect from those developed by HUD'. *Scurlock v City of Lynn Haven* . . ."

Id, p 826

Whether or not that Court correctly interpreted the township snow load requirement in applying the Federal statute as to an area of Michigan having substantial amounts of snow, nothing in that case alters the correct conclusion here that the Bunker Hill Township Zoning Ordinance requiring a manufactured home newly-sited on a parcel of land to comply with current HUD construction and safety standards is in compliance with Federal preemption requirements.

Petitioners attempt to invert the arguments and the position of Bunker Hill Township by their focus upon its 1999 Resolution. That Resolution is and was meant to explain the methodology for applying the Zoning Ordinance. If a manufactured home is "HUD certified" as being in compliance with current HUD standards, it may be newly placed on a parcel. If it is not so "certified"(i.e., not certified or certified for standards not now in effect), but owners can find an appropriately licensed individual to verify that that mobile home does, in fact, meet current HUD construction

and safety standards, it may be newly-placed on a parcel of land within Bunker Hill Township. A subsequent inspection is not mandated by the Township as correctly observed by the Trial Court; it is permitted as an alternative to meet the Township and Federal requirements of compliance with current HUD standards.

Petitioners understood from HUD correspondence of July 28, 2000 (App, p a-31) that HUD believed that Bunker Hill Township's requirement of compliance with current HUD standards for placement of the manufactured homes in a new location or after a sale:

> "...generally fall under the jurisdiction of State and local authorities."
>
> App, p a-32

Simply stated, Petitioners have no argument at all. If that unofficial HUD letter is correct, Bunker Hill Township's requirement of compliance with current HUD construction and safety standards is, actually, beyond the scope of Federal preemption. If, alternatively, congressional preemption language still controls, Bunker Hill Township must do what it is doing – applying current HUD standards.

Petitioners chose to relocate the manufactured home without first coming into compliance with current HUD construction and safety standards. They now seek this Court's mandate that the Township not apply current HUD construction and safety standards. Petitioners convolute the Federal statute and Federal regulation, in ways not interpreted by the Department of Housing and Urban Development and in ways inconsistent with any of the Opinions of the Courts cited who have reviewed the statute at issue.

42 U.S.C. §5403 (d) is properly cited and correctly applied by the Michigan unreported Court of Appeals' Opinion to this rural Township Zoning Ordinance. This is not an important Federal question. The law is properly applied. Bunker Hill Township requires that a home newly sited must meet current construction standards. This can be verified through current HUD approval or any appropriate engineering certification for old manufactured homes which are in apparent non-compliance with current HUD construction and safety standards. Bunker Hill Township's Zoning Ordinance is in compliance with 42 U.S.C. §5403 (d). Furthermore, §11.13 of the Zoning Ordinance clearly deals with uniformity of aesthetic and appearance standards. When so many cities and townships still have concerns as to manufactured housing, Bunker Hill Township's open and ready acceptance of same in its application of current HUD standards epitomizes what has been sought by Congress.

The Petition is without merit.

THE MICHIGAN COURT OF APPEAL, IN APPROVING THE BUNKER HILL TOWNSHIP ZONING ORDINANCE, AS APPLIED, IS NOT VIOLATING THE DEEPLY HELD MAXIM AGAINST RETROACTIVITY.

Petitioners have always argued that because the 1984 Schult mobile home met HUD standards in 1984 (but does not now), Bunker Hill Township was preempted from imposing current construction and safety standards when the mobile home was newly placed on a parcel of land within Bunker Hill Township. Petitioners have not previously argued the "retroactivity" argument now set forth in their Petition to this Court in the manner set forth to this Court.

Notwithstanding that fact, Respondent believes their argument is incorrect and improperly applied.

Bunker Hill Township's Zoning Ordinance was in place in 1981; the 1984 Schult mobile home did not comply with the 1994 HUD construction and safety standards; the 1984 Schult mobile home was lawfully sited and occupied in 1999 and could have remained occupied at that location, indefinitely. It was, however, moved from a proper, lawful placement without Township approval in 2000, but with forewarning of the Township's disapproval; with forewarning of its non-compliance with the current HUD standards; and without forewarning of HUD's view of preemption.

Petitioner relies primarily on a detailed analyses of retroactivity, set forth both in *Kaiser Aluminum & Chemical Corporation, et. al. v. Joseph A. Bonjorno, et. al.*, 494 U.S. 827; 110 S. Ct. 1570; 108 L. Ed. 2d 842 (1990) and *Landgraf v. USI Film Products, et. al.*, 511 U.S. 244; 114 S. Ct. 1483; 128 L. Ed. 2d 229 (1994)

Because of the complexity of this area of the law, as detailed at length in each of those opinions, it is first important to note that in *Landgraf*, supra., the Court was looking at the applicability of the then-newly-enacted Civil Rights Act of 1991, subsequent to a trial of a former employee's allegations of sexual harassment in violation of Title VII, but enacted while the case was on appeal.

In that case, this Court stated as to whether the statute applies retrospectively:

> "Rather, the court must ask whether the new provision attaches new legal consequences to events

completed before its enactment. The conclusion that a particular rule operates 'retroactively' comes at the end of a process of judgment concerning the nature and extent of the change in the law and the degree of connection between the operation of the new rule and the relevant past event."

Id , p 269-270

Here, there are no "new provisions" affecting contractual or property rights or events completed before their enactment. There is no new rule to apply to the event of relocating the mobile home. When the 1984 Schult mobile home was newly sited on a parcel in 2000, all Federal and Township requirements had been in place. There were and are no "new provisions".

Further, there is a statutory and regulatory scheme that contemplates changes in regulations over time and requires local units of government to keep current with those changes as they occur. Thus, there is no retroactivity. There is not even a vested contractual or property right here. There is the statutory guarantee that there will be regulatory changes, over time, in construction and safety standards and a mandate for local units to be current with those standards. Further, Bunker Hill Township has no independent standards of its own. It is only applying existing, current published Federal standards. Whether or not Petitioners had a "right" to continue to occupy the mobile home at its old location, Bunker Hill Township was unequivocal in its position that it viewed such continued occupancy at the old location as proper.

The extensive and thorough analysis of this area of the law by Justice Scalia in *Kaiser Aluminum*, supra., cannot be adequately summarized herein. However, as pointed out

in the majority opinion, the starting point for interpretation of any statute:

> ". . .is the language of the statute itself. Absent a clearly expressed legislative intent to the contrary, that language must ordinarily be regarded as conclusive."
>
> **Id**, p 835

The statutory language of 42 U.S.C. §5403(d) is clear. It contemplates changes in construction and safety standards over time. It is clear in its requirement that local units of government keep current with those changes and not maintain a standard other than the current HUD construction and safety standards. In this context then, Bunker Hill Township asserts that its Zoning Ordinance is not retrospective under any definition or stretch of the imagination. It is complying with the intent and the language of 42 U.S.C. §5403(d).

In *Anthony J. Covey, et. al. V Hollydale Mobilehome Estates, et. al.*, 116 F. 3d 830 (9th Cir. 1997) , the Court of Appeals determined that the 1995 regulations would have a retroactive effect as related to the lawsuit filed on December 1, 1993. That case is not here applicable. Nothing has changed, either in the statutes or in the regulations, after this case was commenced.

There is no retrospective application here. Every Federal requirement and every Township requirement was in place at the time the 1984 Schult mobile home was, without Township permission (and, in fact, with Petitioners' knowledge that Township permission would not be granted) , newly-sited on a parcel of land in violation of then-existing HUD standards and Township requirements. Had it stayed

where it was, it could have been occupied indefinitely. To be newly-sited on a parcel, it had to meet the then-current HUD construction and safety standards. Such a requirement is in full compliance with Federal law.

Petitioners' argument is without merit. The unreported Michigan Court of Appeals' Opinion in this case is consistent with this Court's Opinions on the issue. There is no "compelling reason" established by Petitioners -- as required by Supreme Court Rule 10, to take this case before this Court.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied. This case was presented to the Michigan Courts on agreed-upon facts. The Michigan Court of Appeals and the Trial Court understood and correctly applied applicable Federal law. There is no overriding Federal legal principle at issue. There is no conflict with Federal Appeals Court decisions. There is no significant Federal question present here.

The Petition should be denied as being without merit.

Respectfully submitted:
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